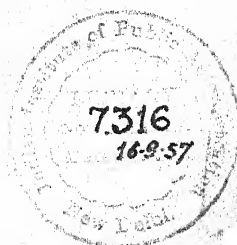


# SMITH OF BIRKENHEAD

BEING THE CAREER OF THE  
FIRST EARL OF BIRKENHEAD

BY  
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## INTRODUCTION

**I**N an obituary notice of Lord Birkenhead, Mr. J. L. Garvin observed: "He, more than any person one remembers, requires two biographies. The first narrating the career of the statesman might be written now. The second dealing with this extraordinary personality in quite another way could hardly appear for some years yet."

The present book is designed to fall into the first category mentioned by Mr. Garvin. Although, inevitably, it contains some comments upon the remarkable life of its subject, it is intended in the main to be the story of his public life, with the necessary record of his up-bringing and education.

Lord Birkenhead, in one of his essays, has set forth in characteristic phrases his own views on the function of biography, and he has there outlined what he considered to be the area within which the biographer may range without offence, suggesting, at the same time, certain considerations that should govern comment.

"A man who undertakes public life," he says, "is rather like a man who publishes a book. Within reasonable limits, he challenges observation and relevant criticism. And indeed, he very frequently makes it about others. Such a one cannot claim that candid and honest examination of his career should

cease with his death. He has deliberately played for a great and a public stake. Just therefore, as his acts and general character, reasonably challenged and received attention in his lifetime, so in due relation to the interest and importance of his career must he expect that an unmalicious dissection will continue after his death."

This book does not analyse Lord Birkenhead's character and actions, but malice can reside in synthesis as well as in analysis. Here nothing is set down in malice, and Lord Birkenhead's own rule has been applied.

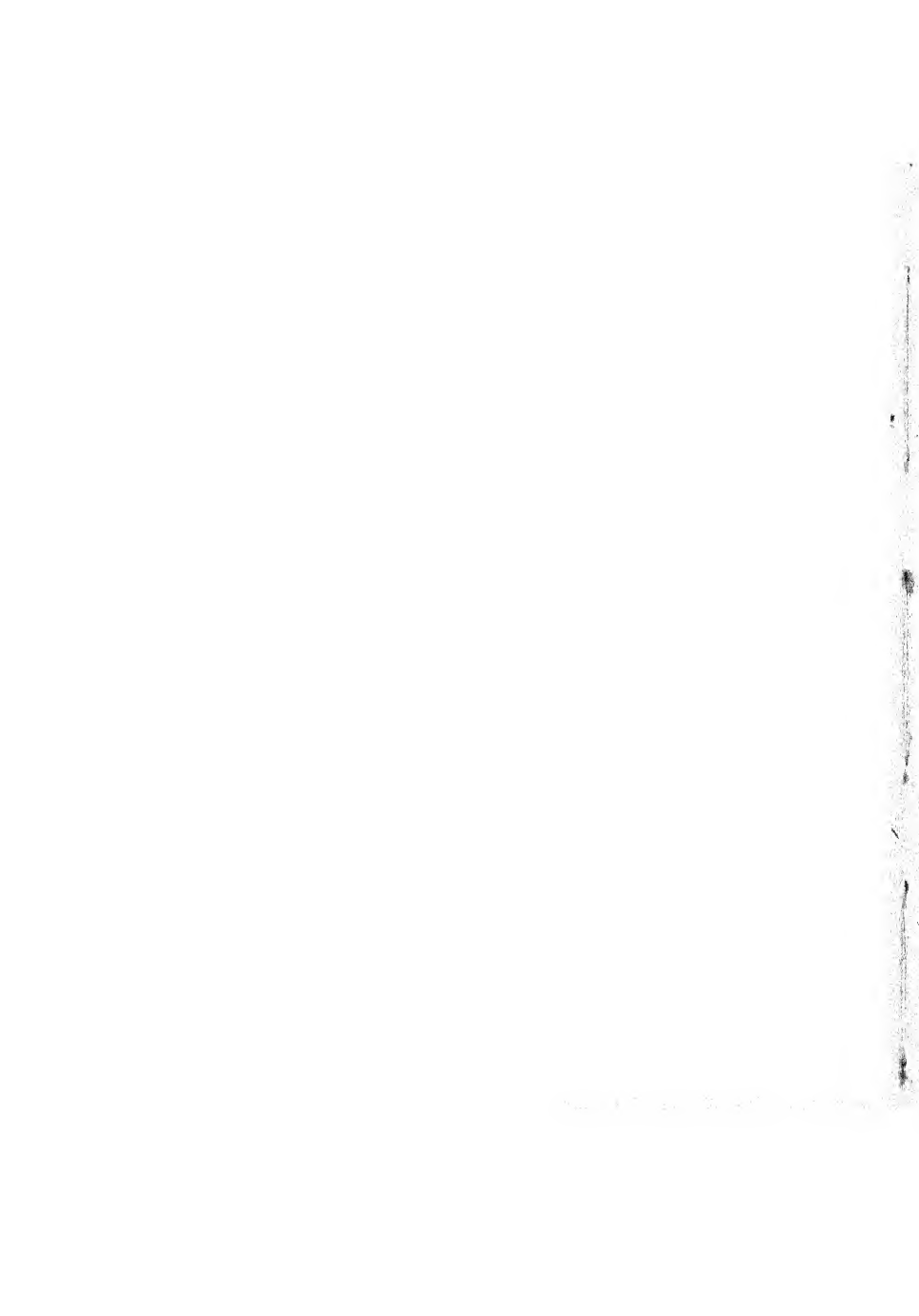
On the other hand, I trust that this work is free also from anything savouring of fulsome adulation. The fact that I cannot claim to have had the friendship of Lord Birkenhead should be counted in favour of the book as an impartial biography. It is well known that Lord Birkenhead's friendship had a particularly fascinating quality. It inspired loyalty and affection even in men who could not tolerate his political opinions. Men who had been the subject of his most incisive criticism can testify to the regard and admiration which he inspired. "If you want to dislike him, keep away from him," said one of his political opponents, who knew him, to another who had not that advantage. It is much to be doubted (and indeed it is tribute to Lord Birkenhead that it should be so) whether any of Lord Birkenhead's intimate friends will ever be able to see their hero in true perspective. In any event, many years must elapse before any of them can pretend to address themselves to the construction of a candid biography

or to the furnishing of an impartial estimate of his merits and defects.

Apart, however, from any biography that may come from his friends and any official "life" that may be published, Lord Birkenhead will indeed be fortunate if he escapes the attentions of those who, taking advantage of the fact that the dead cannot be libelled, compound succulent fare for the curious in the form of volumes purporting to give the "secret history," or the "inside story," of the lives of the great and notorious.

But even when the exhaustive biographies are written, and when the fictional works are published, the story of his career with its wonderful attainments will stand undisturbed. The credit of his achievements cannot be enhanced; the reality of them cannot be controverted, though the achievements themselves may be disparaged. And when all his private defects and failings, invented as well as real, are thrown into the scale against what is here recorded, it is to be doubted whether, in the eyes of any reasonable man, conscious of his own frailty, the balances will oscillate appreciably.

H. A. T.



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# SMITH OF BIRKENHEAD

## CHAPTER I

### A BIRTH IN PILGRIM STREET

**L**ORD BIRKENHEAD was never reticent concerning the history of his family and the point at which he began life. It has been freely stated that Lord Birkenhead's great-grandfather was a miner, and it would be convenient in reviewing the antecedents of the Earl to start with that particular member of the Smith family, "the greatest family in the world," as Lord Birkenhead was in the habit of saying.

More than one hundred years ago there resided in the village of Rothwell, a few miles from Wakefield, one Thomas Smith. If every person who works in a colliery can be described as a miner, Thomas Smith was indubitably a miner. But his duties were not concerned with hewing coal. If local history be correct he earned his living by tending fans and ventilation equipment of a pit at Allerton Bywater, some little distance from his home. It would appear that, like his distinguished great-grandson, his means of transport were sometimes unusual, and that at one period of his life he made a practice of riding to and from his work on the back of a mule. Again like his

great-grandson, Thomas Smith was not idle after his day's work was done. He was a man of unusual physique, a pugilist of no mean ability, for he became champion of his county in the old-time sport of fighting with the bare fists. Whatever be the laws of heredity it seems probable that Lord Birkenhead owed his unusually powerful frame and his combative instinct to sturdy Tom Smith, the Yorkshire fan-minder.

Evidently, there was a spark of ambition, too, in Thomas Smith. He was not content that his son should follow him into the colliery. There came a time when Tom could point with pride to a school in Wakefield in which his lad was following the very respectable calling of a teacher. For all its respectability the teaching profession was evidently too humdrum for the son of the pugilist. There was, too, a strain of gipsy blood in this branch of the Smith family. The young man deserted his high desk, made a porter's pack of his belongings, and set off on the high road in search of one of the abundant opportunities that were presenting themselves for enterprising men at a time when the industrial north was rapidly developing.

His star took him to Birkenhead. There, at first, he resumed his original calling and became a teacher in the Brunswick Wesleyan School. In that institution he met his future wife, the mistress in charge of the girls' department of the school. But they did not wed until the young man had renounced teaching and had set himself up as an estate agent and the founder of a business which still prospers in that town. This Mr. Smith appears to have been, like many of the stalwarts who laid the foundations of the prosperity of the

north, an austere puritan. So rigid were the views of this Dissenter on the subject of Sabbath observance, that he banished from his home his seventeen-year-old son, Frederick, for some trivial act which the father considered incompatible with the respect which a Christian ought to have for a holy day. Accordingly, history presents us with the spectacle of Lord Birkenhead's father at a recruiting office in Liverpool taking the Queen's shilling as a recruit for the Royal Artillery.

It must have been obvious to the recruiting sergeant that the transaction was unlikely to prove one of the Queen's bad bargains, for the youth had been a pupil of the High School of the Liverpool Institute, at which he won a Canning Scholarship to Queen's College.

Many Smiths must have passed through the ranks of the Royal regiment in the course of its long and glorious existence, but it is very much to be doubted whether one of them excelled or even equalled the extraordinary record of one who began as Boy Smith of Birkenhead. In four years he had attained the rank of sergeant-major, which, in those days of enlistment for twenty-one years, was in itself a considerable achievement; but true to his family tradition of making good use of leisure, he taught himself Latin, Greek and even Sanscrit. Later, we find the sergeant-major acting as a tutor to the children of officers, instructing them in the classics. Nor was that all. Soldiers demand entertainment. Sergeant-Major Smith supplied it by means of a somewhat rough and ready theatre. As an entertainment provider he appears to have been as successful

as he was as a tutor, and the time came when he was making an income larger than that enjoyed by some commissioned officers. The figure has been given as eight hundred pounds per annum. Some of this income was, no doubt, derived from his position as Secretary of the Punjab Auxiliary Committee of the Bengal Asiatic Society.

Lest Frederick Smith's military career may appear to have lacked martial achievement, it should be mentioned that he saw active service on the North-West frontier of India, and that, indeed, he was once offered, but declined, a high position in the Persian Artillery. The whole term of Frederick Smith's military service appears to have been little more than four years—a fact which suggests, having regard to the customs of the time, that he was "bought out." This indication of parental intervention and forgiveness receives support from the circumstance that, on his return from the Army, Frederick Smith entered his father's estate office. Three years later he was admitted to partnership, and shortly afterwards took out a licence as an auctioneer.

Four years after his return from the Army (he being then about twenty-five years of age), Frederick Smith married. His bride was a Miss Elizabeth Taylor. She was a daughter of a Birkenhead rate collector, but her forebears, like those of the bridegroom, were of Yorkshire origin. Mrs. Smith became the mother of five children of whom Lord Birkenhead was the eldest son. There were two other sons, both of whom died in the year 1924. The second son, Captain Sydney Smith, succumbed to an illness contracted

during the War, and the late Sir Harold Smith, the youngest son, died in early middle age after achieving distinction at the Bar and in the House of Commons and exhibiting considerable promise and wit as a playwright.

The two daughters of the marriage were Miss Clara Smith, who later became Mrs. John Vickers-Thomson, and Miss Louie Elizabeth Smith.

Mr. and Mrs. Smith had been married about two years when history notes the arrival of the future Lord Chancellor. The house which boasts the distinction of being the birthplace of the first Earl of Birkenhead is No. 36 Pilgrim Street, Birkenhead. It is fairly close to the heart of the city and therefore, in the course of some sixty years, the locality has undergone the changes usual to residential areas lying near to the centre of considerable cities. Nevertheless, even when allowance is made for such changes, it is evident that the Smiths were housed no better than is many an artisan to-day. No. 36 Pilgrim Street is one of a group of three modest houses, the front door of each opening directly on to the pavement. Almost opposite was a stone-mason's establishment, and farther down the street an industrial works of some kind.

As the family grew, and while the eldest son was still quite young, the Smiths moved to a better locality, known as Clifton Road. While there, the family were able to achieve two ambitions, and since they were both of a recreational kind, their conception can be set down, with a fair measure of confidence, to young "Freddy," as he was then known. Who



else, at such an age and in such circumstances, would long for two ponies and a billiard table ?

The father, who had never been happy in the estate office, had now realised a cherished desire and had become a barrister. He began practice on the Northern Circuit, and, exhibiting remarkable aptitude for his new calling, briefs in plenty came to his chambers.

Though he began to practise much later in life than is customary among barristers, Frederick Smith was soon regarded as a lawyer of unusual skill. Sir F. Kyffin Taylor, K.C., President of the Liverpool Court of Passage, once spoke of him as "a commanding personality of very varied attainments, of great capacity and of unlimited common sense." Smith Senior seems to have cherished, even in his early days at the Bar, the hope that his son would follow in his footsteps and adopt the law as his profession. There came a day when Frederick Smith and his wife had to face the somewhat painful experience of dispatching their small son, now eight years of age, to a preparatory school at Southport. As is not unusual on such occasions, the father tendered the boy some helpful advice, concluding with an exhortation to work hard, and "one day you may become Lord Chancellor."

The educational establishment at Southport to which young Smith was sent in 1883 was the Sandringham School. In later years, on a Southport platform, he recalled his association with the town. He said, "Almost exactly twenty-seven years ago, on the Southport Station, a small and shivering

schoolboy alighted from the train in order to begin in this town a scholastic career. I was that schoolboy. I spent three happy years of my life in Southport. There is hardly a street I do not know and that I do not remember." For a boy in a boarding school to acquire such a knowledge of the town suggests that there were times when Freddy Smith ignored the school curriculum and studied local topography. In the school ledger is to be seen another hint of boyish exuberance in the form of a debit of 7s. 6d. against the pupil's account for "Glazier's charge." The accounts also disclose that he studied the classics and that he incurred extra charges for French and music. The lessons on the pianoforte were, clearly, wasted, for in later years Lord Birkenhead said that, poor man though he was, he would rather forfeit fifty pounds than attend a classical concert, for he had no ear for music, and that it was only with difficulty that he memorised the refrain of the National Anthem.

Sandringham School history relates that F. E. Smith was a promising boy at athletics, and that he was a useful member of the school football team.

The Smiths appear to have been a very happy family. Evidently the father had learned much from his own upbringing in a strict, puritan household. There was never a rift in the happy relationship which existed between himself and his own son. Lord Birkenhead frequently paid tribute to the memory of his father, "whose wise counsel, I think I may truthfully say, I very seldom neglected." Of his mother, he wrote at the time of her death in 1928,

at the ripe age of eighty-six, "She was a very shrewd woman with great force of character. No children ever had a better or a more affectionate mother. I cannot myself recall an angry word from her since I was a schoolboy, and I cannot doubt that I deserved many." On the other hand, his mother has left it on record that Frederick was an unusually good child who never gave her the slightest trouble, partly, she says, because he was so active, mentally and physically, that he was always able to occupy his time.

As a child, young Frederick Edwin Smith was plainly a boy of unusual gifts. He had a mind unusually receptive and a memory unusually retentive. As a result he learned with astonishing rapidity. Further, he was industrious, and thus it came about that he could absorb large quantities of knowledge, and what was more important, could retain them and draw upon them when required. To put it briefly, he was a "bright" lad. His unusual aptitude as a scholar, however, would not have carried him to the height which he attained; he had a quality which many suburban boys of his type lacked, and he had it in abundance. Like his father he was ambitious, and made no secret of the fact. When his father pointed to the Woolsack as a goal towards which he should strive, young Frederick had the hardihood to inform his school-mates that he was "going to be Lord Chancellor."

For the second stage of his education, the future Lord Chancellor passed from the preparatory establishment at Southport to a school at Birkenhead. At this point it is necessary in the interests of veracity

to emphasise a fact which emerges clearly from this narrative of the beginnings of Frederick Edwin Smith. Obviously, he was not quite the typical "poor boy" of self-help literature. His beginnings, though humble, are not comparable to those of, say, the late Doctor Joseph Wright, an Oxford Professor of Philology, who at the age of six was working in a Yorkshire quarry, and who taught himself to read without so much as the aid of a teacher. His start in life was much more propitious than that of Field-Marshal Sir William Robertson, who improved his education by paying a soldier to read "improving" books to him while he, a trooper, cleaned his buttons and military upholstery.

The life story of many a Labour statesman discloses beginnings and antecedents much more humble than those of Frederick Edwin Smith, but it must be admitted that a comparison with men in this category is hardly fair, for their achievements were of a different order. These men did not attain eminence in a learned profession, nor did they, in achieving political success, compete within their own Party with men of the highest attainments, having all the advantages which come of aristocratic birth and considerable wealth. "Humble beginnings" is not an expression which can be truthfully applied to Lord Birkenhead's start in life. Nor were his ancestors the humblest kind of people. Even the miner among his ancestors was one of the better paid colliery workers. With his grandfather, his forebears became professional men, and when young Smith first went to his preparatory school, he went as the child of a

local councillor and as the grandchild of a man well known in Birkenhead and very comfortably circumstanced.

To say this, however, is not in the least to disparage the achievements of Frederick Edwin Smith. Those who know suburban life in cities like Birkenhead, will concede that it is not an uncomfortable existence. A boy born in such circumstances has not the same urge to fight his way forward as has a boy of similar gifts born in circumstances of real poverty. A boy in young Smith's position has no pangs of hunger for food or for knowledge ; no sense of social injustice drives him forward and reinforces his determination to win his way out of an environment of squalor and despair. The middle-class boy, if he would "do exploits," must overcome a considerable temptation to be satisfied with that state of life to which it has pleased God to call him. Unless he has overcome that temptation, or unless his parents are urging him along the rising path to some kind of distinction, he is apt to consider that his father's office is a very congenial place, and that it would be difficult to improve upon the social life which his parents enjoy. Young Smith, however, never dallied with such temptations. At the tender age of eight, he had located his objective, and though the Lord Chancellorship can have meant little more to him than a high-sounding title, he recognised that it was situated somewhere high up in the world of affairs, and it was there he meant to be.

Another erroneous notion which might well be dissipated at this stage, is the almost ludicrous

assertion that Lord Birkenhead was "a Lancashire lad." It has been solemnly recorded in at least one very reputable London newspaper that he was born within the sound of the whirring cotton mills, and that "he had the same soul as most of those sturdy working-men who crowd to Blackpool in the summer, who flocked to the cinema and theatre in the winter, making the streets resound with their clogs in the sunny or the misty morning."

A period of twenty years' residence in Lancashire, and close contact with it in later years, perhaps entitle me to say that although Lancashire would have been proud of Lord Birkenhead, this picture of him as a Lancashire lad can hardly survive even in a superficial examination. The town of Birkenhead is in Cheshire, and where Birkenhead stands, Lancashire and Cheshire are much farther apart than the width of the Mersey suggests. It may be insisted, and with truth, that Lord Birkenhead belonged to Liverpool as much as he belonged to Birkenhead, and that Liverpool, after all, is in Lancashire. But Liverpool is, of all the Lancashire cities and towns, the least characteristic of the county. How different Liverpool is even from the adjacent city of Manchester may be gathered from the fact that locally they speak of a "Manchester man" and a "Liverpool gentleman," and, be it noted, there are parts of Lancashire in which the term "gentleman" is regarded as somewhat dubious compliment. On one occasion Lord Birkenhead said: "Liverpool is incomparably the greatest town in Lancashire." No typical Lancashire man would or could have made such an assertion.

Further, such evidence of Lord Birkenhead's ancestry as I have been able to discover and examine leaves no ground for thinking that he had any Lancashire blood in his veins.

Indeed, it would seem a somewhat idle enterprise to endeavour to label Lord Birkenhead with any such geographical tag. He was not characteristic of any county or of any clan. The man stands in a class by himself.



## CHAPTER II

“MASTER FRED E. SMITH SAID——”

THE year 1885, in which he attained the age of thirteen, was an eventful one for young Fred Smith. It marked the termination of a stage of his schooling, and recorded one of the few set-backs of his career. He entered an examination for a scholarship at Harrow, but he failed. Lord Birkenhead was always more informative about his many successes than his few failures. Consequently, a search for an explanation of his failure in the Harrow examination yields no result. It is possible, however, that a clue is to be found in a speech which he made in 1926 when he distributed the prizes at Birkenhead School, to which he passed after the gate to Harrow had been closed against him. He said: “While you are young, cultivate the habit of industry. I regret that I never did so. I can speak with the knowledge and experience of the value it would have been to me had I cultivated the habit when I was your age.”

This set-back, while it must have been a sharp blow to the pride of a boy who had already a reputation for exceptional intelligence, was, no doubt, a salutary experience, for never again did he fail in any educational test. It is impossible to say whether Harrow would have changed the course of his career.

It seems unlikely. It is more probable that it would have affected his character and personality. It is interesting to speculate on what might have happened to him there. He might have met, perhaps, and served as a fag, a senior boy named Stanley Baldwin. There would have been an earlier ripening to his friendship with a clever lad named Leopold Amery whom he had met at the examination; while it is almost certain that he would have begun much earlier his friendship with Winston Churchill, and as a consequence, the political history of our day might have been changed in many important respects. Nevertheless, the political experience of the future Lord Chancellor did, in fact, begin in the year 1885. Soon after his admission to a Clifton Park school, the youthful population of that institution was whipped into a state of turbulence by a General Election. The boys from Conservative households looked naturally to young Fred Smith for a lead, for was not his father prominent in the local Conservative Association, under whose auspices he had become a member of the Town Council? They did not look in vain. Indeed, Fred Smith was there complete with a large Party rosette, ready to cross his small, but effective, dialectal sword with any champion of the local Liberal candidate, Mr. Kennedy, Q.C. The proficiency which he showed in his argument with his school friends in the playground may have been responsible for his selection a year later as the spokesman of the boys of the school when they desired to hand to the principal of the school, Mr. Robert Galloway, M.A., a present on the occasion

of his marriage. If tradition be correctly based, to the astonishment of the master, and possibly to the embarrassment of the recipient of the gift, the scholar's speech was considerably more eloquent than his headmaster's. It happened, too, that there was a reporter present, and thus the very first public speech of Frederick Edwin Smith attained the dignity of print. "Master Fred E. Smith," runs the report, "said he had been deputed by the other boys to present to Mr. Galloway the tea service, and accompanying testimonial, which, with his permission, he would read." The proof of his mastery of language thus exhibited must have been useful to the youth in dispelling from the minds of the masters, the suspicion, expressed by one, that the remarkably good essays done by Fred Smith as part of his homework were, indeed, the product of his father's mind.

There was an occasion at Birkenhead School when Smith showed that he could command clear and forceful language even in circumstances of some excitement. A master had declined to accept as accurate an answer which Fred Smith had given to a question. The dark, lanky pupil rose in his place and, pointing a finger at the master, he observed: "I decline to accept the view you have taken, sir, and I offer you an open challenge to demonstrate before the form that I am wrong."

Young Smith paid the penalty of his impudence, but the episode caused such a sensation that it is still well remembered by his contemporaries, and it cannot have made easier the attainment of the captaincy of the school, which, nevertheless, he did secure.

A boy so precocious might not have won popularity among his school friends had it not been for the fact that he was very proficient at games and a courageous and high-spirited leader in any boyish enterprise.

He showed great promise at Rugby football, and in his later schooldays played for Birkenhead Park. It may be mentioned in passing that his two brothers were also good at the game, and there were occasions when their mother was able to point to three fine sons, each as tall as a Guardsman, playing in the scrum of the local Rugby Club. That interest in yachting, which later made Lord Birkenhead a familiar figure at Cowes, was born during his schooldays at Birkenhead. He was fond of the river, and much devoted to a small sailing boat which he possessed. On one occasion he steered it out to sea, and disappeared from the view of his associates. In these circumstances, an absence of two hours caused great perturbation amongst the youngsters. But he returned cool and self-possessed, and in reply to their questions as to where he had been he answered, lightly: "Oh, just looking round."

It must have been during his schooldays that he learned to play lawn tennis, for he once wrote that he took to tennis when the dress for the game included shorts and stockings.

In school football, a Birkenhead contemporary has described him as "a doughty player, fairly skilful and quite fearless—a trifle ruthless, some of his opponents thought." That was in the days when he turned out for a boys' club that played in a field adjoining an abattoir, a circumstance which earned

for the team the title of "The Slaughterhouse Wanderers."

The foregoing description of Smith's method of play is illuminating in view of a passage in an article on sport<sup>1</sup> written by Lord Birkenhead about two years before his death. There he states: "It has been my experience all through my life that a young man reveals his character very plainly in the field of sport. I do not mean that the best tennis player will prove the most intelligent worker, but I cannot play three sets of tennis with a couple of young men without at the end forming a definite opinion as to their respective qualities, of courage, perseverance, intelligent anticipation and sense of honour." There are some, perhaps many, who will feel that Lord Birkenhead revealed his character in those very early days of his life, and that the description applied to his football—"skilful, fearless, a trifle ruthless"—is a fairly accurate summing-up of the characteristics he displayed on the larger field of life.

On the last visit that Lord Birkenhead ever paid to his own school, he caused great merriment among the boys by reading what he alleged to be an old school report concerning himself. It ran:

Classics: Admirable. French: A Parisian accent and a sound grammatical knowledge of the tongue. Divinity: Easily the best in the school. General Character: By universal admission, the finest moral influence Birkenhead School has ever known.

Whatever may have been the nature of his school

<sup>1</sup> "If I were Twenty-one."

reports, his contemporaries assert that he was fonder of games than of learning, but in spite of that, he became head boy of the school.

A sport which made a strong appeal to young Smith about this time was the newly-introduced recreation of cycling. At the age of nine, he learned to ride a high bicycle. He took a machine to Egypt with him when, under the guidance of his father, he had the advantage of a tour in that country. He recalled this experience nearly half a century later when he was a guest at a banquet given by the Cyclists' Touring Club. "My father," he said, "a very good horseman, wasting his gift on this occasion, ambled gracefully by my side on a white ass. The road was bad and sandy, but nevertheless I attained the Pyramids, and I am certain that I was the first Englishman or boy who ever rode from Cairo to the Pyramids in that way." Among his other adventures as one of the earliest cyclists, he rode in a ten mile race and participated in a ride from Liverpool to Edinburgh. With these accomplishments to his credit, he told the Cyclists' Touring Club at their jubilee dinner that, as a cyclist, his claims were not second to those of anybody present.

It was, no doubt, Lord Birkenhead's affection for cycling that caused him to be invited to unveil at Meriden, a village which is traditionally the exact centre of England, a memorial to the cyclists who fell in the War. His tribute on that occasion showed very clearly that he was still conscious of being a participant in that remarkable spirit of comradeship which characterises cyclists.



He said he remembered well in the early days of the War, when motor cars and motor cycles were not so numerous as they were in the later stages, the degree of dependence that was placed on the humble cyclist in France in 1914-1915. Theirs was a lonely life; theirs was very often a lonely death. He was sure that if they could have seen this day which brought them together with all England at its most beautiful, they would hold their heads, if it were possible, still higher in the knowledge that their own friends and comrades of the wheel, the men with whom they had ridden, and with whom they had raced, in the very centre of this England, were met together to offer them their tribute of admiration and memory.

In view of this devotion to the bicycle, it may appear surprising that he did not become an equally ardent motorist, vying with Earl Howe for laurels as a driver. But the fact is, that although he took a keen interest in motor cars, driving did not appeal to him, and the place in his affection which had been occupied by the bicycle was taken by the horse. To the end of his life, he was a very keen horseman, and the villages about Charlton, his country home near Oxford, were more familiar with the spectacle of the Earl astride a spirited horse than lounging among the cushions of a motor car. It was probably the cushioned ease of the automobile that made it appeal to him so little save as a speedy means of transportation.



## CHAPTER III

### TWO MILESTONES

IT would seem that, in his later school days, Smith conceived the ambition of a career at Oxford. It is possible that he thought of winning his way to the University by means of a scholarship, because his school had an excellent record of success in such examinations. It is possible, too, that his father had turned his mind towards a scholarship or an exhibition for financial reasons, for although Frederick Smith, Senior, was doing well at the Bar, he had a family of five to maintain and to educate. With the untimely death of the father, in 1888, the winning of a scholarship became a necessity if young Smith was to achieve his ambition of an Oxford education. At this stage, the far-sighted and unselfish mother asserted herself. She might quite reasonably, as her son has pointed out, have warned the boy that it was his duty to leave school to make himself self-supporting as far as possible by taking a situation in some local office. She did otherwise. "The greatest debt of many which I owe to my mother is that she steadfastly encouraged me to attempt this hazardous path to a fuller education," said Lord Birkenhead in an article.<sup>1</sup> The "hazardous path" was mapped at a consultation between Smith's

<sup>1</sup> "If I were Twenty-one."

schoolmaster and one of his uncles. The scholarships for which he should compete were selected and the course of study defined. For a year following the death of his father, the boy applied himself with great diligence to his work, and, for a time, was a student at University College, Liverpool. This course at Liverpool was the first fruit of his new endeavour. It was won in an open scholarship examination about six months after his father's death.

This, however, was not Fred Smith's first educational success, by any means. In local records may be found these interesting indications of the boy's scholastic progress :

*April, 1888.*

In the Cambridge Local Examinations (juniors) there were 5,655 boys examined, and *F. E. Smith*, of Birkenhead School, secured 4th in all England for Latin, and 38th in all England for religious knowledge.

*Speech Day, August 4th, 1888.*

Special Prizes. Sir William Jackson Prize for English Literature—*F. E. Smith*.

Brassey Prize for Modern History. (1) W. F. Johnson ; (2) S. Downs and *F. E. Smith*.

French—(1) *F. E. Smith*.

*Speech Day, August 3rd, 1889.*

(This was Smith's last year at school.)

"The Rev. Arthur Sloman, headmaster, presided, and the prizes were distributed by the Lord Bishop of Chester (Dr. Jayne). A classical programme was concluded by a scene from Terence's comedy of 'Phormio,' in which the following took part :

Demipho, an old Athenian gentleman, H. P. Walsh. Geta, his confidential slave, H. F. Robson. *Phormio*, an adventurer, F. E. Smith. Hegis, S. Downs. Cratinus, H. F. Robson. Crito, W. A. Lowe."

Prize Distribution :

Distinctions gained by past and present pupils from August 1st, 1888, to July 31st, 1889, inclusive : F. E. Smith, Ranger Scholarship at University College, Liverpool.

Special Prizes :

Sir William Jackson Prize for English Literature—A. F. Robson and F. E. Smith.

Cruttenden Prize for French : F. E. Smith and G. H. Townsend.

Head Master's Prize for English Essay : F. E. Smith.

Silver Medal and Certificate presented by the Liverpool Shipwreck and Humane Society for exercises in saving life from drowning : F. E. Smith.

A former schoolmate has written that he has a vivid recollection of Smith "leaving the rostrum on Speech Day staggering under a load of prizes." The description seems to be justified by the facts.

Most of these successes were achieved after his father's death. They suggest a resolve on the part of the son to take life a little more seriously, to justify the faith of his mother and the interest of his uncle. Always before him, too, was the example of his father who, from less propitious beginnings, and in face of serious obstacles, had achieved so much.

Had his father survived, it is probable that Fred

Smith would have gone to Oxford whether he had won his way there or not. In 1888, the extent of his father's prosperity might be indicated by the fact that not only had he accepted the mayoralty of Birkenhead, but was mentioned as the next Parliamentary candidate for the division. Some years before his death, Frederick Smith acquired the habit of co-operating with his brother in giving a Christmas party to two thousand poor children. But when his estate was realised, it was found that his widow would have an income of about six hundred pounds per annum for the combined needs of herself and the five children. It is worth noting, in passing, that this condition of affairs was described by Lord Birkenhead in one of his writings as "straitened circumstances." The expression is indicative of a financial sense which most people will regard as defective. An income of six hundred pounds a year for a mother with five children to maintain cannot be regarded as affluence. In 1888, however, the value of such an income would be equal to about one thousand pounds to-day. In these times, a widow with five children and an income of one thousand pounds per annum would not be generally regarded as being in straitened circumstances. At all events, it is highly unlikely that a county court judge would accept such an expression as a correct description of the situation. It would, however, be conceded that from such an income the sum essential to an Oxford education for the eldest son could hardly be found.

Thus for young Smith a scholarship became

essential, and the uncle who had consulted with the boy's schoolmaster undertook to subsidise the lad to a certain extent should he succeed in the examination. The original decision was that Smith should sit for an examination at Balliol, but an illness made this impossible, and he was left with a classical scholarship at Trinity or Wadham, as his one remaining hope. He was well aware that the financial situation would not allow him to try again if he failed. It was, as he well knew, a critical stage of his life. The tension inseparable from such an examination was eased by an inspection, in the December moonlight, of the two colleges between which, if successful, he would have to choose. "The haunting beauty of that winter's scene determined my choice in one swift moment," he wrote in after years. Wadham, as he saw it from the college garden on that occasion, presents a view which, he says, "whether you see it by day or whether you see it by night, is the most enchanting spectacle which Oxford can afford."

One question put to Smith in the course of the examination was, therefore, easily answered. He elected, if successful, to go to Wadham, and when, after what seemed to be an interminable period of waiting, the porter of Wadham pinned upon the college notice board an announcement of the result of the examination, he saw to his delight that his name was one of the elect. Thus he passed what he has described as the first milestone of his life.

Locally his success was announced in the *Birkenhead Advertiser* in the following terms :

## BIRKENHEAD SCHOOL

*Success of the late Alderman Smith's Son.*

As a result of an examination lately held at Wadham College, Oxford, Mr. F. E. Smith, of 9 Lorne Road, Oxtou, has been elected to an open scholarship of the value of £80 per annum and tenable for four years.

Mr. Smith was for four years a pupil at Birkenhead School, and for the last twelve months has studied at University College, Liverpool. He is the eldest son of the late Ald. Frederick Smith, formerly mayor of this borough.

Smith's emotions on learning the result of his exertions were neither of pride nor yet of relief. They were the emotions of a man determined to reach some objective which most of his fellows regarded as distant and unattainable. He said: "I was now to be educated side by side with those who were to be rivals and competitors for the rest of my life. They would enjoy no advantage, social or educational, which was denied to me. The field thereafter was open to competition, and I felt confident that I was able to compete." Thirty years later, when he passed another momentous milestone in his life and became Lord Chancellor of England, we find him expressing the same inspiring spirit of self-confidence. His words were: "I approach the discharge of the high duties which await me in a spirit of anxious solicitude; but not, believe me, in one of morbid self-distrust."



Because he did not come from one of the more notable public schools, Smith had practically no friends to greet him at Oxford or to embark with him upon a new and fascinating experience. But Wadham is a small college, and it was not long before his genius for friendship had made him known to most of his fellows. Among the first friends he made at Oxford was one John Simon, with whom he was destined to contend so frequently, both in the courts and in the House of Commons. During their legal and political careers, the limelight which fell upon them so frequently usually disclosed them as well-matched and vigorous antagonists, but so far as their private lives were concerned, there was an intimate friendship which began with their meeting at Wadham and was terminated only by the death of Lord Birkenhead, forty years later.

A "Political Student," writing in *The Times*, in 1921, said of Sir John Simon and Lord Birkenhead :

"The two were together at Wadham in the early nineties; in fact, *they were Wadham*, with some little assistance from C. B. Fry, and the editor of *Common Sense* !"

Though Smith selected Wadham as his college because "he cared much for beauty," the choice was fortunate in quite another way. In a small community his gifts became known very quickly to his fellows, and he was soon recognised as one of the outstanding personalities of his college. Indeed, it might be said that it was not long before this was true of him in relation to the entire University. He

was early appointed acting secretary of the Wadham Debating Society, and Sir John Simon has asserted that the minute book of that society for the period when Smith was secretary, "contained passages of daring humour and scathing invective not unworthy to be compared to Aristophanic comedy."

This book might also enable one to ascertain the extent to which Smith followed advice which, later, he tendered to others in "The Art of Public Speaking."<sup>1</sup> There he counselled the beginner to "join a debating society and get the value of your subscription by practising upon your fellow-members. They will not enjoy it, of course; but then, neither will you enjoy their speeches."

Smith may have used the Wadham Society as something to practise upon, yet it seems clear that his fellow members thoroughly enjoyed the experience. But the delights of his oratory were not long to be exclusively reserved to his colleagues at Wadham. Not far away was the Oxford Union, an assembly as critical of the art of speech as the House of Commons itself. Meantime, Smith had other recreations than public speaking.

There was, in particular, the Wadham Cat Club, founded by Smith and C. B. Fry. Of the many clubs then existing at Oxford, the Wadham Cat Club imposed what were probably the most severe qualifications for membership. The aspirant had to prove his courage and his agility by climbing out of Wadham, getting over the spiked railings and walls of Trinity, moving thence to the invasion of Balliol and St.

<sup>1</sup> *The Pocket Birkenhead*, edited by "Ephesian."



John's before returning to Wadham. If, on reaching Wadham, the aspirant could release the Club by stealing the keys from the sleeping porter, not only was his admission to full membership secured, but he won also a dinner at the Clarendon. During his membership of the Club, Smith won the dinner on no fewer than four occasions. The Oxford of those days possessed many clubs and sets, whose membership would have been very congenial to Smith, who was as sociable as he was fearless. But to him there was one insurmountable obstacle, probably the only barrier that could prevail against him. Membership often required means far in excess of those possessed by Smith. Not for him were the lunches at Vincent's and the Gridiron Club, nor participation in those dinners which would cost a young and foolish host no less than fifty pounds. Smith could, no doubt, have made a good show at polo, and it is safe to say that he would not have proved the least skilful in driving a four-in-hand coach to Woodstock, where he was destined in later days to be frequently the guest of the Duke of Marlborough; but he had, of necessity, to find his recreation and amusement in less expensive pursuits. He played football, both Rugby and Soccer; hockey also interested him. Tennis, riding, running and swimming were all in his athletic programme. He indulged in sport, primarily, for the same reason that every healthy youth indulges in it; but at the same time, he had satisfied his own mind that athletics were essential to success in life, that the ancient Greeks were right in placing athletics almost on an equality with the cultivation of the mind. The

time spent in sport he regarded as an investment which yielded its dividend in freshness and efficiency of intellect. Had he sought formal distinction in sport, he could have attained it. But he would not make a fetish of any game. Nevertheless, a Rugger "Blue" should, it seems, have come his way. Contemporaries consider that he merited it; but there was a fashion at the time for bulky forwards, and Smith was a lean, lithe fellow. Further, at a critical time he broke his arm and could not play. Mr. C. B. Fry has put it on record that "F. E." played with great dash, proving himself an undeniable tackler and showing his weight in the scrum. His ability as a runner may be gathered from a remarkable episode which occurred in 1920, when, as Lord Chancellor, Lord Birkenhead (then 48 years of age) was dining at Oxford in a company which included W. R. Milligan, a famous runner of his day. What occurred is well related by the late Sir Theodore Cook in his book, *The Sunlit Hours*.

"The Lord Chancellor remarked during dessert that he was still fairly active, and, for example, would be willing to wager three to one in fivers that he would run four times round Tom Quad (which must be a mile in all) before Milligan could run eight. Despite Milligan's unselfish financial advice both his host and another Don took the bet. The competitors ran as they were, in short dinner jackets and light dancing pumps, and the Lord Chancellor carried the extra weight of a large red buttonhole. The Senior Common Room came out as one man to see the sport. Lord Birkenhead evidently took it seriously, for he

had a man to pace him as he ran on the long stretches of stone along the gravel path. They started at half past ten. Milligan strode out, like the thoroughbred he is, but just as he was finishing his sixth lap, he was told not to hurry as the elder guest had won. He was probably quite glad to stop, for his pumps had repeatedly come off, and his feet must have hurt him considerably. But he had the consolation of knowing that he had done one and a half miles to his opponent's mile, and that no other undergraduate was likely to be beaten in a fairly long foot race by the Lord Chancellor of England."

It cannot be said that such athletic proficiency argued a misspent youth, for Smith's history at Oxford makes such a suggestion impossible. He worked hard. He recognised that he owed it not only to himself but to his mother and his uncle who had made an Oxford career possible to him, to justify their faith in him. He proved loyal to the conclusion that he had formed before going to Oxford that, "since unfortunately one had to work, it was on the whole worth while to work really hard and achieve some substantial results." The record of his scholastic achievements will come later, but meantime, as indicating his capacity for study and his abnormal gift for assimilating knowledge, it may be noted that his Law tutor once remarked to him in the presence of another student who has put the fact on record: "As for you, Smith, it's no use you coming here any longer, for you know as much law as I do, and probably more."

It may be surprising to some that a young man

whose time was so fully taken up by his studies and recreations could acquire habits that would result in a load of debt. But Smith did make debts and has quite frankly owned that he did. "I found it impossible to live within my income," he said, writing of his University days. "I was sure, however, that if I took the full advantage of my stay at Oxford—and this meant a certain expenditure and even extravagance—I should soon be able profitably to capitalise my experience."<sup>1</sup> It must be borne in mind, however, that his income was probably one of the smallest enjoyed by any student at Oxford. His debts, however, did not trouble him unduly. His Oxford soubriquet, "Don't-care Smith," was applicable to his financial position as it was to his more reckless enterprises. About two years after his admission to Oxford, he was reported by the Bursar at his college, along with three other undergraduates, as being in serious arrears with their college accounts. To make the matter worse, there was no immediate prospect of any of them being able to reduce their adverse balances. Dr. Joseph Wells, to whom the matter was reported, sent for the four undergraduates. Writing of this episode, Lord Birkenhead has said: "Dr. Wells was the most embarrassed of us all, but he succeeded in explaining that he understood our difficulties and that he wished to lend us the money unconditionally. I doubt whether a college tutor, not specially rich, ever did a more generous or more unforgettable act." The occasion of this revelation was the death of Dr. Wells in 1927, when Lord

<sup>1</sup> "If I were Twenty-one."

Birkenhead contributed to *The Times* a short appreciation of the character of his former tutor. The incident serves to show that, whatever may have been the particular causes of the debts which F. E. Smith accumulated at Oxford, they could hardly have included very serious extravagances, or Dr. Wells would not have relieved him of the unpleasant necessity of paying his just dues. The stringency of Smith's financial situation is revealed by the fact that, as a present on the occasion of his twenty-first birthday, his mother sent him postal orders to the value of three pounds—a gift which, he said, "I knew she could not afford." He ran up accounts with the Oxford tradesmen until, when he left the University, he was in their debt to the tune of several hundred pounds, but he was able to discharge the whole of these liabilities within three years. To mark his gratitude to the tradesmen who had permitted him to live temporarily above his means, he continued to the end of his life to deal with some of them.

In one of his articles, written late in life, he justifies his policy of incurring these debts. He declares that he was always confident that he would be able to pay them off. To make the most of his experience at Oxford, it was necessary, in his view, to live a fairly full life. "An overwhelming horror of any form of extravagance is, in the long run, just as likely to hinder a man as to help him," is one of his assertions. "If he is a fool, miserliness will not avail him; sooner or later the sharks will find him out." I have had the advantage of seeing the typescript of this

extraordinary article. It is significant that at one point, the author, in revising the article, had doubts about the wisdom of commending his own Oxford policy to the youth of to-day, for he had inserted in pencil this qualifying observation: "But, of course, the experiment is dangerous, and a happy issue may be quite individual." For the most part the article exhibits the cynical indifference of "Don't-care Smith," but the sentence interpolated in pencil is the voice of the man of fifty-six, an ex-Lord Chancellor and the father of an undergraduate.

Smith's financial policy at Oxford is worth close consideration, for it must not be forgotten that mastery of money was an art he never acquired. In the end, the lack of this highly-important quality divorced him from the high places of state just at a time in life when his gifts as a statesman might have carried him past milestones even more momentous than those which already lay behind him.

His failure was not in the making but in the administering of money. Mr. Micawber's odd sixpence defeated him. Plainly, he ought to have learned the tricks of that sixpence in his Oxford days, but equally plainly, he did not. To his mind, it was not worth bothering about. There would be sixpences in plenty in the years to come. The future could always be mortgaged, and such a future as lay open to him was not one that would be rendered the least less attractive by the inclusion in it of a few necessary debts for liquidation.

It is easy to look back over his life and to say that censure was merited by his policy at Oxford;



but what young man, embarrassed in the present by an income inadequate to his needs, and foreseeing almost with certainty an income that spelt affluence, would refrain from taking advantage of credit facilities freely offered by those who could supply him with so many things he desired? It is understandable, though it is regrettable.

In spite of Lord Birkenhead's defence of the Oxford debt system, it is easy to see that at a critical time its existence stood between him and that mastery of personal finance without which no man's success in life can be regarded as full and complete.

A habit which Smith acquired at Oxford, and which remained with him right up to the time of his death, was that of being fashionably attired. Old residents of Birkenhead recall clearly his visits to the city during the Oxford vacations because of the impression made upon their minds by the clothes he wore. He never favoured the garments of eccentricity worn by the self-conscious intellectual to demonstrate to the world that he is different from the rest. Whatever Smith wore might be unusual to Birkenhead, but it would not long remain so. He was the advance guard of fashion. Tall and slender, he wore his clothes effectively. On one of his earliest vacations, he appeared in the streets of Birkenhead wearing a cloak which fastened at the neck with a chain and clasp. This was Oxford's latest sartorial lead to the youth of the country. Had the notorious Oxford "bags" been created during his day, there is little doubt that Smith would have introduced them to

Birkenhead. Throughout his life, he appeared to be scorning the tradition that a lofty mind cannot concern itself with clothes. In his later days, he frequently appeared in the House of Lords wearing a suit that would have won the unstinted admiration of any undergraduate. His taste in colours was not always faultless. There was in him a partiality for a touch of vivid colour which might perhaps be set down to that dash of Romany blood which seemed to express itself in his dark skin and, where Mr. Garvin saw it, in his eyes, "dark and hardy." His clothes were always youthful. Even in formal attire, one could detect the little innovations favoured by young Oxford. It is remarkable perhaps that, until the last year or two of his life, his youthful raiment never seemed in the least inappropriate. Latterly there was a certain heaviness of body which did not altogether harmonise with the youthful cut of his coat. But as late as the middle fifties, he seemed fittingly turned out when he was dressed in the clothes customarily worn by the smart young man of twenty-five or thirty. And his outlook on life was well expressed by the clothes he wore.

Always in his speeches, except on the most solemn occasions, could be detected passages distinctly reminiscent of his debating days in the Oxford Union. A study of such early speeches as remain on record leaves the impression that one of the factors that contributed to his success as a speaker was his ability to give not only a faithful reflection of the mind of the undergraduate, but also to impart just that pinch of irresponsibility and that drop of acid



sarcasm which are essential ingredients of youthful conversation. The popular speaker is always he who utters "What oft was thought, but ne'er so well expressed." From the point of view of the Conservative undergraduate at Oxford, Smith did that, and did it with the same efficiency that he exhibited in his work and in athletics. Because of this he was able to vault what was considered an essential preliminary to leadership in the Oxford Union. On the occasion of his maiden speech, he appeared as a leading speaker, and was scheduled as such before the debate began. Ordinary mortals were required to make an impression in the rough and tumble of debate before being invited to take what might be called a "front bench" part. But Smith's fame had preceded him. Wadham men had spread the tidings of his fluency, of his wit and boldness in discussions in their own small society. Thus it was that his first and greatest success in the Oxford Union, like his first and greatest success in the House of Commons, was achieved in circumstances quite novel to him.

The occasion of Smith's Oxford Union success and the story of the debate, are matters of history. What young man who has ever aspired to give his elders a piece of his mind, could fail to be thrilled by the spectacle of this young master of invective castigating a senior politician and a propagandist of austere virtue? Admirers of Sir Wilfrid Lawson, against whom Smith was speaking on this occasion, have helped us to visualise the scene by immortalising Sir Wilfrid, as a tribute to his "pure and unworldly life," by erecting a statue of him in London. Tall,

bearded, correct, he must have furnished a striking contrast with the majority of his youthful audience both in appearance and in his views about the beverages with which man should be trusted. Sir Wilfrid was, of course, totally opposed to the sale and consumption of alcoholic liquor. He was one of the earliest prohibitionists. In yet one other respect he set an example to the United States. He destroyed the entire stock of wines which passed into his possession when he succeeded to his father's baronetcy. For a man who rejoiced in such an action to go to Oxford to participate in a discussion on local option, showed courage, for he can hardly have imagined that the Oxford of that day would give unanimous support to his views. But, unlike many prohibitionists, the man had a sense of humour. Nevertheless, it is doubtful whether he bargained for such scathing criticism as that which came from the nineteen-year-old undergraduate who preceded him in the order of speaking. From Smith, standing easily, indulging in no gestures and no declamation, Sir Wilfrid heard a vivid description of that orgy of destruction which hitherto could scarcely have appeared to him as anything but a courageous and very virtuous act, capable of sustaining for all time such feeling of righteousness as he possessed. The voice of Smith is moving the majority of the crowded assembly to resentment. "He destroyed that priceless heritage of ages, that treasure-house in which was stored the bottled sunshine of the South," said the accusing voice, "he destroyed it under circumstances of such barbarity that even the most thirsty throat

in Carlisle was denied participation. I tell you, sir, that, in years to come when I am lounging in Abraham's bosom, and the honourable gentleman begs me to give him a cup of water, I shall say to him, 'No, not a drop. You dissipated greater liquor.' "

That was Smith's peroration. Sir Wilfrid was to speak next, but between the end of Smith's speech and the beginning of Sir Wilfrid's observations, there was interposed such a roar of delight that the Union can rarely have heard either before or since that memorable occasion. It is recorded that the merriment and the applause lasted a full five minutes. In measuring the achievement of Smith on this occasion it must be borne in mind that he was still in his 'teens; that he had an audience of at least eight hundred, mostly undergraduates, keen and critical, some of them already displaying the genius that would carry them to high places in the State; and among them was a generous sprinkling of distinguished guests. Smith could not have needed the word of the two principal University papers to assure him that he had made the speech of the evening. He must have been well aware of it the moment he resumed his seat, and it is not surprising that he has set down this episode as the second milestone of his life. It was no doubt this maiden speech of Smith's that Sir John Simon had in mind when he wrote: "In the power of retort and ridicule and all the arts of rhetoric, F. E. was just as good at twenty as he was in the prime of his career."

After such a performance, it was but natural that

his fellow students should wish to hear him as frequently as possible, and it was almost equally in the natural course of events that a speaker of such exceptional gifts should rise quickly to the presidency. Smith attained that honour in the following year, 1893. His occupancy of the presidential chair certainly gave to that office an enhanced prestige in the eyes of the outside world, and, for some time thereafter, the political aspirant who could tell the officials of his Party in London that he had been President of the Oxford Union, could be sure that he would be afforded more than a fair opportunity of achieving his ambition.

Smith did not neglect the Oxford Union after the termination of his presidency. So long as he remained at Oxford, whether as undergraduate or Don, he was to be found at the more important debates. Even after he had risen to the high places and was burdened with responsibilities and duties, he would still make time occasionally to visit the institution in which his oratorical gift attained full flower in a single night.

There was an occasion, in 1913, when Mr. Lloyd George visited the society to oppose a motion of "No confidence in the Government's Land Policy." In those days, Mr. Lloyd George was not the type of politician for whom Oxford would be suspected of cherishing any affection. On that account there was some surprise at the result of this debate, for Mr. Lloyd George secured the rejection of the resolution by a majority of 69. Evidently Smith decided that this event indicated that his old society needed some

attention from him, for a fortnight later he went up to Oxford to oppose a resolution of confidence in the Government. By a happy coincidence, this debate took place on the twenty-first anniversary of his famous maiden speech. He had made good use of those twenty-one years. He had attained to a place of great distinction in his profession, being numbered among the leading King's Counsel, and commanding fees as high as he cared to make them. Further, he was one of the leaders of the Conservative Party; a Privy Councillor; an occupant of the front bench on the Opposition side of the House. Young Oxford was proud of him, and when he rose to speak he was greeted with very loud cheers which continued for some minutes. In the end, the motion of confidence in the Government was defeated by a majority of 210, a figure which must have satisfied the former president of the Union that the malignant spirit of Mr. Lloyd George had been exorcised. The debate was marked by some amusing sallies at the expense of the distinguished visitor. Mr. Philip Guedalla, who spoke in favour of the motion, said he was "between the devil and the deep K.C."; and further alluded to Smith as one "of nature's Balliol men."

During his career at Oxford, Smith appears to have divided his attention very prudently between work and play. His successes in the Union and on the playing field do not appear to have distracted his attention from his studies in the least. And always he made good use of his vacations. He filled one Long Vacation to advantage with a voyage in a sailing ship round Cape Horn; and on another occasion,

he walked without a stop from Birkenhead to Llandudno, a distance of sixty miles, in fourteen hours, winning, incidentally, a wager of fifty pounds. During another vacation he appears to have addressed himself to the business of reforming the Birkenhead Conservative Association; but considerable as was his knowledge he could hardly be expected, as yet, to have learned that reform of the internal organisation of the Conservative Party, either locally or nationally, ranks (and continues to rank) among the few splendid things that mankind has yet to achieve. The result of Smith's efforts was briefly summed up by the *Liverpool Echo* in the phrase, "Birkenhead Conservatism was ungrateful."

The time came, of course, when the value of his career at Oxford, an experience which was made available to him by the generosity and devotion of others, was put to the test. Smith did all, and considerably more, than was expected of him. In 1894 he took a first class in Jurisprudence. In 1895 he won the Vinerian Scholarship. The second success led to his appointment as a Fellow and lecturer at Merton College, an achievement which was of considerable importance to him, for to quote his own words, "the problem of existence was satisfactorily solved." Two years later, he became lecturer of Oriel, and in 1898, he was appointed University Extension lecturer in modern history, and, in quick succession, Examiner in Final Schools at Oxford, and Extension lecturer in modern history at the Liverpool University.

Considering his career at school and at Oxford,



Smith must have acquired a full experience of examinations, both as a candidate and as an examiner. He was qualified to express an opinion on the system, and in 1927 he expressed it with the utmost frankness. "All my life," he said, "I have detested people who set themselves to stimulate efficiency by holding examinations. I shall never forget how, after ten or fifteen years of barbarous treatment, I made up my mind that never in the world would anyone compel me to confront the examiners. At the present time I hesitate to say that there is a single subject in which I could pass an examination."

Soon after his appointment to Merton, a very unusual compliment was paid to Smith. Towns do not give public recognition to young citizens fresh from a University, even when they have greatly distinguished themselves; but the citizens of Birkenhead arranged a public dinner in honour of Smith. It was a tribute paid by all parties and creeds. The chairman of the organising committee was a Roman Catholic, and the secretary a Liberal. What was announced as "a complimentary dinner to Mr. Fred E. Smith on his election to a Fellowship of Merton College, Oxon," was presided over by the Mayor, Mr. J. Pennock.

Local press reports disclose that Mr. Benedict Jones, M.A., J.P., proposed the toast of the evening, "Our Guest," and reminded the company that Mr. Fred E. Smith was the son of a distinguished fellow townsman, "who, by his abilities, won for himself the highest position which the citizens of Birkenhead had it in their power to bestow." The

speaker thought they had every evidence that his son was showing traces of that hereditary ability. It had been said that there was no place like the Universities of Oxford and Cambridge where one found his place so rapidly. When a man went to either of these Universities, whether his speciality was classics, mathematics, science, law, theology or athletics, he met the pick of men from the whole of the British Isles, and many from Overseas as well. He had to meet these in absolutely free and unfettered competition, and had to meet a very hot lot indeed. So it happened that a man found his level pretty quickly. By that he meant, that Mr. Fred Smith was one of those who, having exceptional abilities, had, by his aptitude and work, found his level at the very top of those he had had to compete with, that level being at the very top of the legal learning of Oxford. That was a thing the citizens of Birkenhead had every right to congratulate their fellow-townsmen upon having done, and he felt very glad that a college had recognised his abilities, and had invited him to become one of the Fellows. Mr. Fred Smith had also been President of the Oxford Union, but whatever eminence and honours might be showered upon him he would never get any more genuine tribute than the appreciation of his fellow-townsmen.

Smith, who was loudly cheered on rising, warmly thanked the company for their kindly reception. He thought one of the most striking features of University life was the democratic element to which Mr. Jones had alluded. The question asked was not



“ Who is he ? ” but “ What kind of a man is he ? ” and there could be no more healthy standard, no more salutary criterion, than that test at Oxford and Cambridge. The life there made a man take a broader view of men and things, and it had this inestimable advantage, that it taught a man that whatever he thought he could do, there was always someone who could do it a very great deal better. He did not care what branch it took, whether of athletics or learning, but they would always find a great many men who could do a great deal better than oneself, and that he took to be a healthy experience. They would be glad to reflect that it was possible now for members of the middle classes to win all the highest honours the advanced educational facilities of the country placed before them. One of the best and noblest works to which the Liberal Party had ever set its hands was the gradual removal of those tests and disqualifications which prevented the free use of the Universities by all classes. He would like to see this carried a step farther, so that facilities would be given to any boy, however humble, to march up every rung of the ladder which led from the elementary school to the higher school, and from the higher school to the University, and from the University to the highest prizes the civic service could afford. The most gratifying feature of that entertainment to him was that it was not of a party character, and in this he saw that while they might be on different sides politically, this would never lead to acrimony, nor to the destruction of private friendships.

In conclusion, Smith referred to his uncle, "to whom I am bound by every tie of affection and gratitude, but to whose political convictions I should feel it impossible in orderly language to do justice." That circumstance he assured them had never produced any strain upon their friendship.

The uncle concerned, Mr. E. P. Smith, spoke later in the evening, and, having declared his pride in his nephew, said the diffidence he felt in responding to the toast was caused probably by the innate modesty which was a natural characteristic of the Smith family. He was not responsible for it, but every member of the family had been characterised by that qualification and, he hoped, always would be.

Thus refreshed by a tribute such as few men of his age had ever received, Smith returned to his study.

One who was an undergraduate at Oxford when Smith became a Don tells me that, outwardly, the transformation was complete. He became one of the most Don-ish of Dons, conceding no trace of that exuberance which he exhibited as an undergraduate, though he continued to take a prominent part in athletics. There was, however, an apparent lapse, and a time came when the very superior and erudite Don was discovered in the Oxford police station, in detention. The explanation was simple, and was in no way discreditable to the young Don. In the course of a scrummage between the police and undergraduates who were celebrating a Royal visit to

Oxford, Smith's "scout," a senior and highly respectable servant, found himself involved in the battle. The constables in this part of the fray were men imported from London and from adjacent counties and were less discriminating and less restrained than the Oxford police. They maltreated the unoffending servant. Smith, passing, recognised their victim. The veneer of his Don-ish rank slipped from him. Actually it was Smith the undergraduate who went to the rescue with the dash of a Rugger forward. He was arrested, but was dismissed "without a stain on his character" and with enhanced prestige among the entire 'Varsity population. That was his second brush with the police, for once, at Wadham, he was involved in an escapade which caused him to be "run in."

For approximately ten years Smith was intimately associated with the life of Oxford, and despite all that occurred subsequently, Oxford remained a very large part of his world. Of all the honours and distinctions that fell to him, it is doubtful whether any ranked higher in his estimation than his office as High Steward of Oxford University. Further, it was at Oxford that he met his wife, winning thereby one of the real and enduring prizes of his career. It was to Oxford that he repaired for rest and meditation at that unhappy juncture when circumstances had obliged him to retire finally from the political battlefield and to seek wealth in the City of London, in unadventurous and uninspiring directorships. Barely two years later he was dead, and it is at Charlton that his ashes rest, at that Charlton which is close to

Oxford and where stands the residence which, beginning as a modest country home, was enlarged and extended many times, every improvement and every addition being made to a plan that would ensure that the aspect of the place resembled that of an Oxford college.

## CHAPTER IV

### ON THE NORTHERN CIRCUIT

**S**MITH'S love of Oxford was so real that at one time it appears to have weakened his lifelong ambition of a legal career. But it is doubtful whether his resolve was really seriously shaken, for he appears to have taken the necessary preliminary steps to membership of the Bar at about as early a date as was possible in the circumstances. According to the late T. P. O'Connor, there was a romantic reason for Smith's return to his original decision to make the law his profession. Says T. P.: "He had made up his mind to settle down to the duties of a Don, and then might in time have grown to the old, the fusty, and the barren being that the Don usually becomes. But love changed his whole career, for he was enslaved by the daughter of a clergyman; she was poor and he was poor, and so he had to take to the law." It is possible, however, that T. P.'s partiality for a sentimental touch led him a little astray in this matter. The dates are against him. Smith became a student of Gray's Inn in 1894. He was then an undergraduate. He did not meet his wife until he had become a Don—in 1896, by which time he had covered a good deal of the road between laymanship and the Call.

Moreover, the deliberate fashion in which he chose the Inn which he should join, suggests

that his mind was irrevocably made up. As Lord Chancellor, Lord Birkenhead explained the circumstances in which he came to choose Gray's Inn as the House he would join. He recalled the fact that his father was a member of the Middle Temple, and he continued : " I remember when I was a boy of sixteen years old, he said to me : ' If I were able now to take my decision between the various Inns of Court, I should not join the Middle Temple ; I should join Gray's Inn.' I was then a schoolboy of sixteen, and he explained to me why, if he were making his choice again, he would have chosen Gray's Inn. He said : ' If you judge the Institution by beauty, it is the most beautiful of all the Inns of Court. It is the most intimate of all the Inns—and it is the smallest. It enables a man who relies, not upon patronage, but upon his own ability, to win advancement most swiftly.' I had the great misfortune to lose my father when I was seventeen years old, and it did not fall to me to make the final choice as to which Inn of Court I should join for four or five years, by which time I was an undergraduate at the University of Oxford. Influenced only by the circumstance that it had been the advice of my father that I should join this Inn, I joined it, I suppose at a time when almost all my friends at Oxford were joining other Inns of Court."

This confession is particularly interesting for it will be seen that although Smith allowed his choice to be guided only by the advice of his father, that advice was based on the fact that he considered Gray's Inn to be the most beautiful of all the Inns. Some

four years previously, at Oxford, he had to choose between Wadham and Trinity, and chose Wadham because one aspect of it presented the most beautiful spectacle that Oxford, in his judgment, could afford.

But at Gray's Inn he was no more overawed by his surroundings than he was at Oxford. Dining in an Inn affords small opportunity to a new-comer to impress his personality upon anyone but the persons in his immediate vicinity, even though the Inn be a small and intimate institution. But as becomes obvious more and more as one studies his early career, it was not Smith's habit to go anywhere without leaving behind a very definite impression by which he would be remembered. At his first dinner in the Hall of Gray's Inn, Smith found an opportunity of impressing himself upon the memories of his colleagues, and took it. Shortly after the benchers had left the tables, the ancient hall resounded to the voice of one who was the junior of the entire company. "Mr. Senior," said the tall dark young man who rose from his place at the far end of the hall, "may we smoke?"

To continue the narrative in Smith's own words: "Mr. Senior, somewhat annoyed, said, 'No, you may not.' Unaccustomed to rebuff of that kind, I rose and said, 'Why not?' upon which Mr. Senior, having no suitable repartee ready, wisely remained silent. We were not allowed to smoke for a period which, I believe, was unusually prolonged in punishment of what was regarded as audacity in those days." There can be no doubt that those present on that



occasion remembered him, but not, perhaps, with particular pleasure.

Then as now, the beginnings of a barrister's career were apt to be discouraging to all but the most determined.

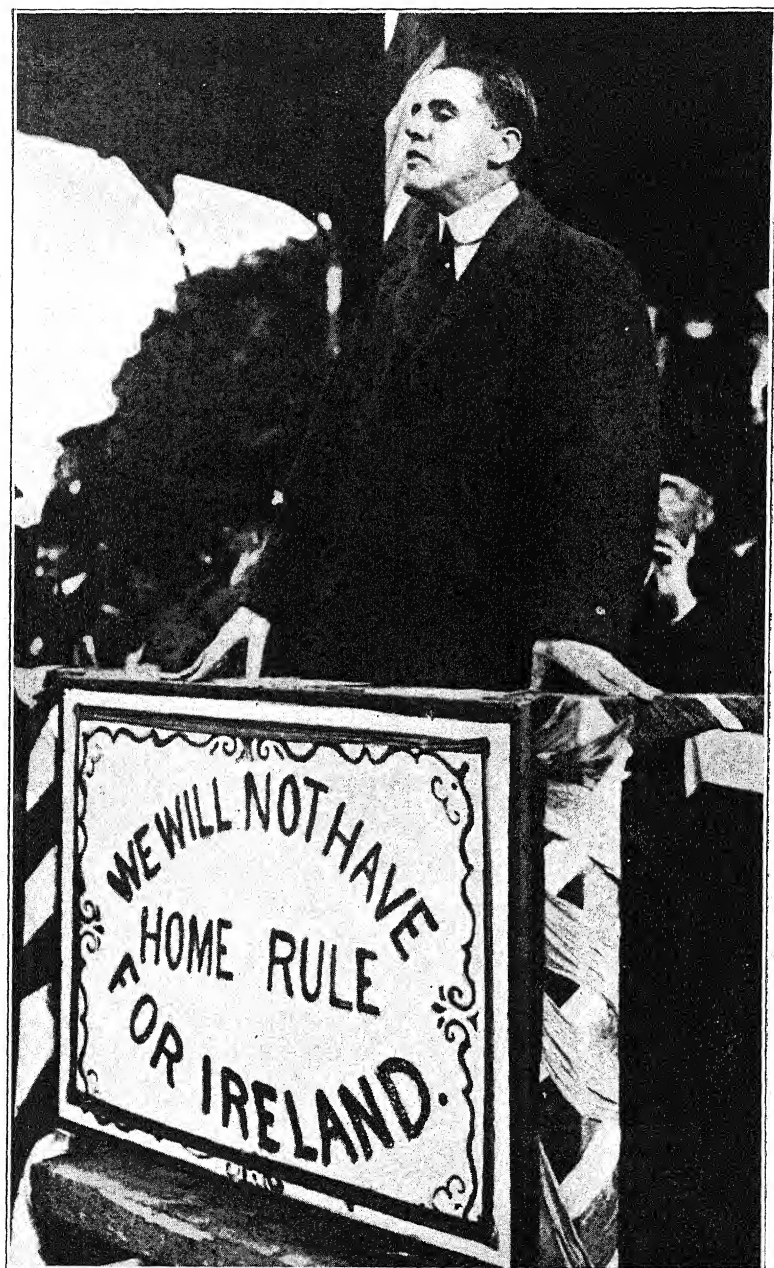
To Smith, when he went into practice in 1899, they were likely to be even more difficult than to most of his colleagues. He had no reserve of funds to support him through thin times ; indeed, he found it necessary to borrow the money to pay the fee incidental upon his entry into practice. Moreover, he had left behind at Oxford debts to the total of several hundred pounds and the mode of life to which he had become accustomed was hardly the most frugal. Thus, when the name "F. E. Smith" was inscribed upon the door of the chambers of Mr. (now Sir) Leslie Scott, in Liverpool, the owner of the name must have found himself in need of all the courage and nonchalance which had earned for him at Oxford the sobriquet of "Don't-care Smith." He had, however, the advantage of being considerably better known in the locality than most young barristers in a comparable position. Not only was his remarkable maiden speech at the Oxford Union a matter of common knowledge in Liverpool and in his native Birkenhead, but four years previously he had embarked upon political speaking in Liverpool. As usual, his initial effort had created something of a sensation, and active Conservatives in Liverpool, and not a few Liberals, were well aware that young Mr. F. E. Smith had a fluent and persuasive tongue.

His first brief involving a court appearance came



to him owing to the fact that Mr. Leslie Scott was taking a holiday. That business brought him a fee of five guineas, plus one for a conference. But in Liverpool it is believed that his first brief was marked for an even more modest figure. It is said to have been given to him by a Liverpool alderman, and was marked £1 3s. 6d. Smith's early days in practice as a barrister may have been lucrative by comparison with the business done by other young barristers on the threshold of their careers. But considered in relation to his needs, his earnings during his first six months of practice, which averaged about fifteen pounds per month, must have seemed painfully small. Nor was he always on the winning side. Many of his earliest cases were concerned with workmen's compensation and with "attempts to persuade the Quarter Sessions that certain insignificant licensed premises were not redundant." The licensing justices appeared to have been determined to reduce the number of licenses, and for all his eloquence, this high-collared young man from Oxford could not create reasons where none existed. As, later, he confessed, "They were entirely right. . . . The greatest advocate who ever lived could not have deflected their intention."

Two years before he began to practise at the Bar, Smith made the acquaintance of Cornelia, Lady Wimborne. The ground of their meeting was a mutual interest in the religious question which was then exercising the country in general and Liverpool in particular. In present days of religious tolerance it seems almost incredible that sectarian interests could





have touched such a low level of antipathy as existed in those days between Roman Catholics and Protestants. The heat generated by the quarrel between the two sects was enhanced by domestic bickering within the Anglican community between the High Church and Evangelical movements. Friction was further increased by the fact that the question of religious education in the State schools was an issue of party politics. The presence of this problem in the political arena was in the nature of an addition to the fuel which went to maintain the fires of hate tended by those who supported or opposed the demand of Home Rule for Ireland. It was practically an impossibility to be a politician in Liverpool and to abstain from religious controversy. As well might a man to-day be a Socialist and take no interest in Russia and Bolshevism. Smith, of course, was drawn into this vortex; as a Conservative and the son of a Nonconformist, there was never any doubt on which side his sympathies lay. Smith had attracted notice by his keen interest and enthusiasm, and, meeting Cornelia, Lady Wimborne, he had suggested ways by which the work of the Evangelicals might be extended and improved. A meeting of the Committee of the National Church League to hear Smith's views on this subject was called. He spoke, as usual, with eloquence and conviction, and the upshot of his statement was that a certain Mr. Joynson Hicks moved a resolution that Mr. F. E. Smith be appointed organising secretary to advance the work of the League in the North of England. This motion was seconded by Lady Belper and carried unanimously.

The fact that a salary was attached to the office must have made it more attractive to one who was about to launch himself into the hard and competitive world of the junior Bar. At first, Smith applied himself to the work with such diligence that, at the end of a month, he was able to present to the Committee such a report of his activities that the Committee were induced to authorise him to take offices and to employ a clerk. The arrangement, however, did not prove satisfactory, and although no definite official reason can be adduced for the severance of Smith's relationship with the League, it seems fairly clear that there was a certain incompatibility of temperament between the young and debonair Oxford graduate who had scarified Sir Wilfrid Lawson, and the somewhat austere personalities associated with the League. The Society, without doubt, benefited by the application to its problems of organisation of a mind of a quality such as it was unlikely to attract very frequently to its service. On Smith's side, the appointment must have been of some utility in providing remunerative occupation for some of that idle time which provides a problem for young barristers. Smith was too resourceful and too gifted a man to tolerate idleness. While he was always scrupulous in his regard for the etiquette of his profession, he did not hesitate to engage in those activities in which a barrister may participate without impropriety. He turned his pen to account. He appears to have dabbled in journalism even in those early days. Further, he wrote books. The story of those works he related to the Authors' Club in 1922,

when he said: "My first two books were written twenty-four years ago. They were both written in the same year, and, I feel ashamed to say, in the same month. One was on the subject of law, and that book, written in a fortnight, was sold for a sum of sixty pounds down. It has passed five editions, and its sixth edition is now in contemplation. The second book was a story of Newfoundland, and I was invited, only a year ago, to bring out a second edition. For that work I also received the sum of sixty pounds. I make bold to say that the writing and publication of those two books constituted a very considerable element in the decision which both I and my wife took in regard to when we were married."

The issue was, in point of fact, a little more romantic than that. He wished to ask Miss Margaret Furneaux to be his wife, and a man who addresses himself to such an enterprise must needs have a certain amount of ready cash to meet the delightful bill of a jeweller and to endow the future with some aspect of security. About a year elapsed, however, before they were married, and in the intervening period, Smith's practice had improved to such an extent that he felt justified in undertaking the financial responsibilities of matrimony. His marriage was the culmination of a genuine romance. Miss Furneaux was the daughter of the Reverend H. Furneaux, a Fellow of Corpus Christi and a scholar of considerable repute. The name is French, but the family had been settled in England for very many generations. Mrs. Smith brought to the partnership many qualities which her husband lacked. She was fond of music and

of quiet pursuits, such as gardening and the collection of old china. But she shared her husband's love of the out-of-doors. They had played hockey together at Oxford, and later they were to travel, ride, hunt, and play tennis in each other's company.

It often happens that with the increased obligations of marriage, a man's earning capacity receives a stimulus. But such a stimulus can hardly affect the earnings of a barrister. He is not permitted actively to seek business, and must wait for it to come to his chambers, a mode of procedure which must make hard times the more difficult to bear. Nevertheless, it is interesting to note that, by coincidence, Smith's income at the Bar improved rapidly after his marriage. He was becoming known, not only in the courts, but in the circle of influential business men who represent the industries of Liverpool and the surrounding district. Political activity, too, was helping, as always it will help an able young lawyer.

The year 1902 was a remarkably good year for Smith. It brought him the Goudie case, in which he achieved a spectacular success at the Old Bailey; but it is wrong to assume, as some journalistic commentators have done, that the Goudie case "made" him. In the previous year he had received from the then Lord Chief Justice (Lord Alverstone) a private note complimenting him on his admirable conduct of a case and predicting a "very brilliant future." The ability which was instantly and generously recognised by the Lord Chief Justice had been noted earlier on the Northern Circuit, and its reward was already on the way. A good deal of important



work was already "on the stocks" in Smith's chambers, or was earmarked for him in solicitors' offices, when the Goudie case was heard. From the point of view of Smith's material success, the value of the Goudie case was that it brought him into the strong limelight that is turned upon the Old Bailey when a *cause célèbre* is being heard. The Press of that day was no less fond of a sensational crime than it is to-day, and the Goudie case was a "story" that served them well. What was more, even the highly respectable newspapers felt they could report it at some length, because it concerned a bank, and the sum involved was very large. The publicity accorded to it was not only intensive but comprehensive. Smith, here, had a considerable share of the limelight.

Goudie was a clerk at the Bank of Liverpool. He was twenty-nine, well educated, and apparently of frugal tastes. His secret vice was that he betted heavily on horse races. Faced with the possibility of exposure and dismissal, if this were discovered, he forged a cheque for £100 to meet his obligations. The evil experiment succeeded. He repeated it. For three years his depredations on the bank continued, but of the £91,000 of which his employers were defrauded all but £750 was paid to bookmakers who, discovering his position, blackmailed him. Only three out of the five men who had forced Goudie to continue and increase his defalcations were arrested, two successfully evading arrest. Altogether the bank lost £170,000 through Goudie's perverted skill in forging cheques and making false entries in the books.

Smith led Mr. Hemmerde for Goudie. Among

other counsel engaged in the case were Mr. Avory, Mr. Rufus Isaacs, and Mr. Marshall Hall.

Smith's client pleaded guilty. The only way in which the young barrister could do anything for Goudie was in his speech to the judge pleading for mitigation of punishment. Towards the close of the case, the three men whose trial was to come withdrew their pleas of not guilty.

All the details of Goudie's crime had been discussed and re-discussed without a word in his defence. By then the judge had taken his decision, and Smith was faced with a hopeless task. He brought to it, however, all his eloquence, and that meant much. Mr. Justice Bigham listened patiently. Goudie, Smith admitted, had betrayed his trust before the others fastened upon him. But for them, however, he would have been a very commonplace criminal. It was as a tool in the hands of these blackmailers, and for their benefit, that he had committed a long series of crimes. But for the others, Smith pointed out, Goudie's crime would not have been so serious. Most of his offences were committed under duress, in fear of exposure and consequent disgrace and dismissal. With all the oratory at his command Smith urged upon the judge the factors which might enlist leniency. Every point was taken and skilfully presented. The whole Court felt pity for the folly and pathetic state of Goudie. The judge, who, it has been said, intended to make the punishment fourteen years penal servitude, sentenced Goudie to ten years. Goudie died in gaol after five years.

After the sentence, the talk was not of the tragedy

of Goudie. The Poet Laureate has given us a picture of the professional detachment exhibited outside a court, following sentence of death upon the son of "The Widow in the Bye Street":

A policeman spat, two lawyers talked statistics  
"Crime Passionel" in agricultural districts.

Outside the Old Bailey on February 22nd, 1902, barristers talked of the sharp rebuke which the judge administered to Marshall Hall, and (perhaps more anxiously) of the adroit work of that fellow Smith from Liverpool. The juniors were a little apprehensive lest he should come to London. They wished him well—on the Northern Circuit.

Smith was content to return to Liverpool, for there he had not only a sufficiency of work, but work whose variety made it particularly interesting. He was not specialising in criminal law; he took whatever came, confident of his ability to handle it efficiently.

One particularly interesting brief that came to him about this time emanated from Mr. W. H. Lever (later to become Lord Leverhulme) and related to a dispute between that great industrialist and the Liverpool Corporation concerning some land. It was the first of many briefs that came to Smith from Lever, and though, of course, Smith was briefed on the advice of Lever's solicitor, it is more than likely that the shrewd founder of a vast business had taken Smith's measure on an occasion in the previous year when they met in friendly debate on a political platform, for Lever had a keen eye for men, and none but the best met with his approval.

A little later Smith was briefed for the Liverpool Corporation in an inquiry concerning the incorporation of outlying districts. On this occasion he found himself among many lawyers of eminence, for, representing various parties at the inquiry, were Mr. C. A. Cripps, K.C. (who as Lord Parmoor was to become the object of some of Lord Birkenhead's most biting invective), Mr. F. A. Greer, Mr. Pickford, K.C. (later Lord Sterndale), and Mr. Balfour Browne.

Interspersed among such prosaic cases were matters of a more sensational and spectacular kind. Later in 1902 came the Kensit Murder Trial.

John Kensit, the Protestant reformer, died as the result of a brutal assault by a crowd in Birkenhead. Subsequently the Crown prosecuted one McKeever for alleged murder. Smith, who, as we have seen, had given platform support to Protestant propaganda, was retained, with Mr. Pickford, K.C., by the Crown.

Kensit had been killed by a blow on the head from an iron bar by someone in the crowd. Many young people of the lowest classes appeared as witnesses. Medical evidence conflicted. There was great excitement in Liverpool and in the court at St. George's Hall. Finally, after a three hours' summing-up by Mr. Justice Jelf, the jury returned a verdict of Not Guilty. Despite the fact that the Crown lost the case, the part that Smith played brought him favourable notice by reason of the infinite pains he took in sifting a vast amount of evidence, and because of his skilful cross-examination.

For some time Smith preserved in his chambers two exhibits used in the Kensit case. One was a

photograph of the precise point in Birkenhead where Kensit was attacked, and the other the iron bar which caused his death. These things kept company for years with a stack of briefs relating to the Ogden litigation, a lengthy series of actions and negotiations which began in 1902 and continued for more than four years.

The preliminaries to the trial of McKeever were interesting, for they involved Smith, acting for the Crown, in a legal argument with the Liverpool Bench. Kensit was attacked in Birkenhead, but the hospital to which he was taken was in Liverpool. McKeever was arrested in Birkenhead where his alleged offence was committed. The inquest, however, was held in Liverpool where Kensit died, and a verdict alleging wilful murder against McKeever was returned. On this, Smith applied to a Liverpool magistrate for a warrant, which was refused on the ground that the fatal blow was struck in Birkenhead.

To that Smith retorted: "It has been decided over and over again that the offence is not determined by the blow, but by the result."

In the end Smith had the case dealt with as he wished, and Mr. Justice Jelf approved not only Smith's argument but his motive in wishing to transfer the case from Birkenhead to Liverpool. By this transference the trial was expedited three months, for the Liverpool Assize was due much earlier than the Cheshire Assize, an arrangement which was decidedly in the interest of the accused, for he was acquitted three months earlier than he would have

been had the case been remitted to the Cheshire Assize.

About the same time, Smith was unexpectedly briefed in another trial on a charge of murder.

On the morning of October 9th, 1902, a spinster of independent means residing in Bootle was found dead in bed with two pillows and a bolster over her face. It was alleged that three girls deliberately entered the house for the purpose of theft, and smothered the old woman as she was lying in bed.

The girls, Rolleson, Eastwood, and Hamilton, appeared at the December Assizes in Liverpool—the same Assizes at which the Kensit case was disposed of. Smith held a brief in an important libel action due for hearing at the same time in another court. Nevertheless, he acquiesced in the suggestion of Mr. Justice Jelf that he should defend the girl Ellen Rolleson. In the civil court it was announced that Smith had handed his brief to another barrister, having undertaken the defence in the Bootle murder case.

The charge against Hamilton was not proceeded with, and she became an important witness for the prosecution.

Smith, fighting against enormous odds, indulged in a long cross-examination, but it yielded nothing for the accused. His only hope now lay in the final speech for the defence. His address to the jury was notable, considering the indifferent case he had. He pointed out the sad position in which the girls found themselves. They were poor. They had not even sufficient money to pay the comparatively small



charges which would have ensured them the services of an attorney from the start, and until the day they appeared in the Assize court dock they had had no assistance, and no advice of any kind. But for the care and foresight of his lordship in instructing Mr. Guy Rutlege and himself to represent the prisoners there would have been no one on their behalf to place before the jury such facts as ought in justice to be put before them in a matter of life and death. He asked the jury to remember the unhappy position of the two girls. They were orphans, and comparatively friendless. They were sent out into the world to make their own living among all the temptations of a large city; and this was something on which he was entitled to dwell, that out of the attempt to make their own living the police had not been able to bring forward a single fact to the discredit of either of the girls. Dealing with the question of whether the prisoners went to the house with murderous intent, he thought it was idle and preposterous to suggest that the two girls, who on the evidence of the prosecution, were capable of a cold and premeditated crime, would heartlessly commit the crime and neglect to remove what was the most damaging evidence of the crime—the pillows. If the jury came to the conclusion that the pillows were placed there by the prisoners, he would ask them to say that the prisoners threw the pillows only casually upon the old lady, that they never contemplated that their action would kill her. There was just the element of doubt which justified them in saying that the prisoners did not intend to commit murder, and that if they were



guilty of any offence at all, it was the lesser one of manslaughter.

The jury, however, after a short retirement, found both the girls guilty but recommended them to mercy on account of their youth, their sex, and their previous good character. Rolleson and Eastwood were sentenced to death.

The country became deeply interested in this case. Thousands of signatures were obtained to petitions. Protest meetings were organised. Several days after the trial it was reported that the girl Ellen Rolleson, whom Smith had defended, had collapsed after sentence and had hardly ceased to sob bitterly since her conviction.

A further touch of drama was given to the case by the discovery that although Smith had described his client as an orphan and she herself and others believed both her parents were dead, her mother, under another name, was actually in another cell in the prison where Ellen was under sentence of death. On Christmas Eve it was announced that both girls had been reprieved and would go to penal servitude for life. By that time Smith was occupied with the very interesting case of Ogdens, Limited.

When he was first retained in 1902 by Mr. (later Sir Joseph) Hood, liquidator of Ogdens, Ltd., in the case between that concern and the tobacco retailers, Smith was practising in Liverpool. When the proceedings came to an end, after one of the longest and most involved cases ever fought in the courts, he had been elected to Parliament, had acquired a substantial practice in London which seemed to justify his

expectation of silk in the near future, and had received from the case fees totalling over 20,000 guineas. In addition it added much to his experience.

Briefly, the case arose through the competition between the American tobacco manufacturers, who acquired control of Ogden Brothers, Ltd., of Liverpool, and most of the British manufacturers, who amalgamated as the Imperial Tobacco Company, Ltd. In the endeavour to obtain the custom of the retailers the American and British combines cut prices to an astonishingly low level. Then the Imperial Tobacco Company offered a share in its profits and a bonus of £50,000 to retailers who would sign a contract to deal only with the Company. Ogdens immediately telegraphed to retailers all over the country not to sign the contract but to wait for their circular. This offered to retailers dealing direct with them a share in the whole of the company's profits for the next four years and in a yearly bonus of £200,000, according to the amount of each customer's purchases for the year. They emphasised that they did not ask any retailer to boycott the goods of any other manufacturer.

The first instalment of £50,000 for the first quarter of the year was distributed by Ogdens in July, 1902. But in October there was nothing for the retailers. The Americans, having at last realised that success was improbable, and having to face British competition in the United States, came to terms with the British manufacturers. The Ogden concern was put into voluntary liquidation with a view to its transfer to the Imperial Tobacco Company.

When the liquidator began to collect the company's debts the retailers declared that their claims for breach of contract, as the promised sum had not been distributed by Ogdens, must be taken into account. They refused to pay for the goods supplied, and the Courts upheld them. Lord Chief Justice Alverstone held that there was an obligation on the part of the company under the contract to stay in business four years so that the profits and the £800,000 could be properly apportioned, or to compensate the retailers.

The retailers formed an association and about £700,000 damages were claimed in nearly eight hundred actions. The two original cases were taken before the Court of Appeal. The appeals were dismissed, and the liquidator then took the cases to the House of Lords. The late Earl of Oxford (then Mr. Asquith) and Mr. Rufus Isaacs (now Marquis of Reading) led Mr. Hemmerde and Smith for the company, and Mr. (later Lord Justice) Bankes led Mr. (now Judge) Randolph for the retailers. The judgments against the company for the two retailers were again upheld. But in each of the remaining cases two issues had to be decided: whether the claimant had any claim on the company at all, and what were his damages to be if he succeeded in his claim. "I was almost overwhelmed," Lord Birkenhead said some time afterwards, "by the number of cases in which I had to consider what defence the company should put up."

The experience he gained here was invaluable. The claims were similar but not identical. There were

many differences in the facts peculiar to each case, all of which the young barrister had to consider carefully. As soon as his defences were delivered there were hundreds of applications made for the purpose of better definition of the issues and preparing for trial.

Eventually negotiations were opened with a view to a comprehensive settlement. These parleys were very complicated, and Smith had to give much time and anxious thought before a successful issue was reached. On September 19th, 1906, peace was made, and to the last a copy of the souvenir presented by the chairman of the Retailers' Association to all engaged in the litigation—giving photographs of the judges, counsel, and others taking a prominent part in the events—hung in Lord Birkenhead's old chambers. A memorial, he said afterwards, to four years of hard work which materially assisted his advance in the profession.

In striking contrast with this commercial litigation was the case of the barque *Veronica*, in which four seamen, while the ship was on the high seas, killed the master, two mates, and four members of the crew. They sank the ship and made their way in one of the lifeboats to Cajueira Island, off South America, on Christmas Day, 1902. They were given passage home in the S.S. *Brunswick*, and the negro cook told the story of the mutiny and murders to the captain of that ship.

The four men were arrested in Liverpool, and in statements to the police blamed the cook for the murders. One of them broke down and confessed. The three others were charged with murder and

piracy and came up for trial in the Spring Assizes at Liverpool. Sir Alfred Tobin and Smith appeared for the prosecution and each of the three was defended by counsel, two counsel undertaking the defence gratuitously. The defence urged that the cook was the guilty man, but Smith's skill helped to bring a verdict of Guilty against the culprits. The negro made a wonderfully accurate model of the *Veronica*, which he presented to Smith, "from Moses Thomas," and it had its place in Lord Birkenhead's chambers with other souvenirs of notable cases.

These were a few of the outstanding cases in which Smith was engaged during his early days at the Bar. Their variety is particularly noticeable and is typical of the whole of Smith's business. It was said of him by a cynic at this period that "he had every bad quality that was merchantable at the Bar." That he had the good qualities also is clear from the compliments passed to him by judges. Said a commentator in the London *Evening News* :

"He never had to assume before judge or jury a confidence in his case that he did not feel. He had it. He never had to pretend for the benefit of solicitors to a legal acumen that he knew he did not possess. He possessed it—and knew it."

His industry was astonishing to those permitted to see it, but to outward seeming he was still the indolent young man from Oxford to whom work was an unpleasant necessity.

While he was making a reputation for himself at the Bar, he could still find time for many diversions. He was as keen a sportsman as he was at Oxford. He

golfed, played tennis, and rode, being accompanied frequently by his wife, now the mother of a daughter. He was a Parliamentary candidate, and was much in demand as a speaker outside his own constituency; he found time, too, for travel, going as far afield as Cuba in 1905.

And amid all these activities he passed what he has described as his third milestone, but since that was a political event, its proper place is in the succeeding chapter.



## CHAPTER V

### POLITICS

IT is difficult to say at what precise point in his life Smith became interested in Party politics. For many years a story persisted, despite denials, that at Wadham, Smith and John Simon tossed a coin to decide which political party each should join, both being agreed that to compete with each other within the same Party would be a futile proceeding. That was one version of the story. Another was similar save that Mr. Hemmerde was substituted for Sir John Simon. A story so piquant could not be easily caught up and destroyed. It persisted until a few years before Lord Birkenhead's death. In 1927, however, Lord Birkenhead was present as a visitor at a debate in the Oxford Union when an undergraduate speaker actually related this yarn in his presence. It was too much for Lord Birkenhead. He interrupted the speaker and denounced the story in terms so emphatic as to lay it low for the rest of his life. Had he lived a little longer, there is no doubt that it would have returned to circulation, for such is the way of legends concerning public men.

Smith's interest in politics undoubtedly began long before his Oxford days. It would hardly be accurate to import Gilbert's expression and say that Smith was "born a little Conservative." At the time of his



birth his father's politics appear to have been a little nebulous. For some time after he embarked upon public life, Frederick Smith, Senior, appeared to have had no pronounced party views. When he became a candidate for the Tranmere Local Board, which preceded incorporation with the Birkenhead Town Council, Smith stood as an Independent. His was a party of one. He improvised his own organisation and paid his own expenses. He was not successful. In 1877, when the future Lord Birkenhead was five years old, Smith, Senior, joined the Conservative Party. This appears to have improved considerably his prospects in municipal affairs. He was early elected to the Town Council as a Conservative member for the Cleveland Ward and found himself in request all over Cheshire and Lancashire as a speaker on Conservative platforms. After nine years' membership of the Birkenhead Council, he was elevated to the rank of Alderman, and after two years' service in that capacity, he secured the mayoralty, only to die after two months in office.

Further, in view of the fact that, towards the end of his life, Lord Birkenhead was a supporter of Prayer Book Revision, and was accordingly counted with the High Church party, it is interesting to recall that, for the whole of his life, his father was an active Wesleyan Methodist, and investigation reveals the fact that his name appeared on the Local Preachers' plan for the Birkenhead area. That he did not change his religion or suffer his interest in it to be diminished when he became an avowed Conservative is clear from the fact that he

was buried in the Nonconformist portion of the Birkenhead Cemetery, and it was there that a body of citizens erected a memorial to him, for which purpose a sum of two hundred and sixty pounds was subscribed by the public.

As a boy, Smith must have heard much political discussion in his home, and some of the arguments were undoubtedly relayed among his schoolmates, for, as has been related, there persists in Birkenhead a story that during the election of 1885 he addressed his juvenile friends in the school playground. A contemporary of his at Birkenhead School declares that it was commonly accepted as a fact among the boys there that at the age of sixteen Smith had delivered a set speech from a public platform. It may well be that a speech he made in the Hope Hall, Liverpool, in the year 1894, he being then twenty-two, must rank as the first important political speech of his life, but there is ample evidence of his participation in political activity long before that event.

Generally, few verbal dishes are so cold and uninviting, or so difficult of mastication, as old political speeches. The subjects with which they deal no longer make any appeal: that people should excite themselves about such topics seems absurd.

There remains, then, the manner of expression. In most instances the choice of language is usually execrable. It would have been intolerable originally but for the fact that the ideas which the speaker clothed in such reach-me-down language were, of themselves, interesting. Thus, when the subject of a political address ceases to lend any interest to the

utterance, the words themselves become so much dry dust. Because of this, it is particularly interesting to look back to Smith's Hope Hall speech of 1894. On the day of his death, the *Liverpool Evening Express* republished the original report of that utterance. It is astonishing to note that although the topics with which it deals mean little or nothing to the reader to-day, no effort of will is necessary to carry the reader's mind through the speech. The mode of expression arrests and holds the interest. The following extracts from the report of the *Liverpool Evening Express* are fair samples of the address. Smith said :

"It was a Unionist Government which first gave them legislation recognising the principle that an employer should compensate his injured employee, and it would be for that Unionist Government to which they believed the country was about, at an early date, to give a mandate—(applause)—to build the edifice upon the foundation which they themselves had laid down. (Hear, hear.)

"Let them rely upon it, the underlying principle of that measure would be clear and unmistakable.

"This was the message which such a measure would convey to the working classes in England—If their employer had not already done so they would compel him to compensate his workmen for injuries they had received in his service; but if his generosity had granted them terms better than the Unionists could exact, they would permit them to avail themselves of them.

"Alluding to the representation of Liverpool, the

speaker said it was true that two of the goats of Liberalism still lurked among the sheep of Conservatism. (Laughter.) They relied upon Mr. Bigham at an early date to deal with Mr. Neville—(applause)—but the presence of that disinterested patriot, Mr. T. P. O'Connor—(Oh!)—conveyed to them a perpetual reproach. It was their desire and Mr. McCartney's intention—(hear, hear)—to relieve that gentleman at an early date of his Parliamentary duties. (Laughter and applause.)

“They would set him free to devote all his time and such talents as God had given him to that journalistic literature of which he was so conspicuous a degrader. (Laughter and applause.)

“What was the position of the Radical Party? They desired to set class against class with the object of deriving therefrom some electioneering advantage. Their motto was, ‘Attack and, if possible, destroy every institution which is attached to your political opponents. Perpetuate and exaggerate every anomaly from which you yourselves may derive a vote.’ That might be a convenient and profitable creed, but it was not the creed of statesmen or of a great political party. (Applause.)

“It was because the House of Lords were determined to resist such aims that they had earned such a debt of gratitude from the people. Lord Rosebery, who had marked his elevation to the Premiership by a habit of giving his party away in his public orations—(laughter)—stated the other day that the Scotch Church was to be disestablished because it was Conservative. There they had the whole duty of the

Radical Party stated by its leader. University representation was to be abolished because years ago Oxford showed its acuteness by passing Mr. Gladstone on to a less scrupulous constituency. (Laughter.)

“Plural voting was to be abolished because it was not in harmony with democratic representation, regardless of the fact that there were far more serious blemishes upon our electoral system. The present Government were going to the country with the cry, ‘One Englishman one vote, one Welshman one vote and a tenth, one Irishman three votes.’ (Laughter and applause.)

“A measure of all-round reform would receive the thoughtful consideration of the Conservatives, but they would not permit the Government to jerrymand the English constituencies. Their opponents alleged that the House of Lords opposed the people’s will in throwing out the Home Rule Bill; but they did not think they would have carried out the people’s will if they had carried out the Bill.

“This was the issue, and there was only one way of settling it—by replacing it unclouded, without any side issues, before the people.

“What, he asked, would have been the feelings of the people if the House of Lords had passed the Home Rule Bill? Could they picture the consternation and the indignation of the betrayed people? (Applause.)

“The Unionist Party, fortified by the lessons of the past, were marching on the future with hope, confident of the patriotism of the great democracy. They believed that the future of the country was secure in the hands of the people who were able to

measure their responsibility by their greatness. (Applause.) ”

At the time of this speech Smith was an undergraduate at Oxford, a fact which circumscribed his usefulness as a political speaker. Nevertheless, the Conservative party locally found him a platform whenever he was available.

About this period Smith made one of his rare excursions into municipal affairs. He had just achieved the high-water mark of his honours at Oxford when we find him in Birkenhead speaking at a meeting on behalf of the two Conservative candidates at the town council election in Grange Ward.

It is significant that although he was not the principal speaker he must have constituted the attraction of the meeting, for the hall proved too small for the electors who mustered, and the gathering had to be transferred to a larger before the proceedings started. Smith's speech was, of course, concerned almost entirely with local topics, but it contains passages of interest even to-day, for the speaker expressed his views on party political labels in municipal elections. The report records that :

“Mr. F. E. Smith, who was accorded a most flattering reception, said that criticising from the standpoint of an outsider the contest in which they were engaged, he would first repeat the congratulations which fell from the Chairman when he said it was a source of sincere satisfaction that they were fighting a party fight, and not an independent fight. They might, however, say to him, ‘Do you believe it to be a desirable thing that municipal contests



should be governed by questions of Imperial policy ? ' He might be told that a man would make an excellent town councillor, although neither a Conservative nor a Liberal, or he might be told again that being a supporter of Lord Rosebery or Lord Salisbury would not prevent a man affording sound and good advice upon questions of municipal policy. He admitted that was true. The whole system of our municipal and Imperial government was an anomaly, but he reminded them that that was necessarily the price they paid for the whole system of party government, and they were content to continue to pay that price because it supplied the country with a vigilant, an admirable, and an able opposition.

"Applying that principle to the question of municipal politics, he asked what were the alternative modes of regulating party contests ? There were two modes, and two only, in which they could regulate municipal contests, if they did not regulate them by the question of Imperial politics. They might possibly be able to range party feeling in a town round a broad point of cleavage in questions of municipal policy. That was one system. There was one other ground upon which municipal elections might be decided—they might decide the issue not by the party to which the man belonged, but by the man himself. Nothing was more common, or popular, than to say : ' What does a man's politics matter in a municipal election ? Is he a good man ? is the question for us to decide.' There was this very grave objection to that course, that if an election contest was going to resolve itself into a succession of considerations as to who was the



best man, what species of election campaign did they think they would have? If they adopted that as a mode of regulating municipal elections, they would inevitably have a long succession of demoralising personalities. If such a policy was generally adopted it would only be a question of time before it completely ruined our municipal institutions. It would, of course, be useless for him to pretend that in the municipal history of their town there had not been mistakes made, but taking the history of the town from the beginning and looking at its gradual development step by step, and at the magnificent result, and remembering that Birkenhead, from being a small and unknown village, had grown to be such a town that they could not mention it to any educated person in any country in the world without his instantly knowing the town meant—when they contemplated these admirable results, and when they reflected that the government of the town during that development had been regulated step by step by a council that had consisted almost entirely of Conservatives, they, as a party, could contemplate that result with feelings of supreme and unrivalled pride.”

This speech was the subject of a eulogistic leading article in the *Birkenhead Advertiser*. Said this organ of local opinion :

“The oratorical work of the evening was crowned in a general as well as in a political sense, by the brilliant torrent of really forensic eloquence poured forth by our able young townsman, Fred E. Smith, who, fresh from the acquisition of his University

honours gained at Oxford, riddled, with the red hot shot and shell of apt language and fervid delivery, the 'philosophical essays' of the other side. And while arranging a series of interesting propositions on the science of municipal warfare, he did not neglect the more practical work of giving the other side a tremendous 'towelling,' on the very substantial basis of solid facts. It will amuse and charm all readers to mark the smashing blows that Mr. Smith delivered at Liberal effrontery, and the admirable manner in which he turned the Liberal arguments against themselves."

It was not until he had been called to the Bar and was practising in Liverpool that sustained political activity was possible to Smith.

Lord Birkenhead's book, *Law, Life and Letters*, leaves no doubt concerning the motives which actuated him in embarking upon a political career. After cataloguing what he describes as the "dazzling prizes" reserved strictly to those lawyers who succeed in the political race, he goes on to say: "I myself, whether I proved right or wrong, had irrevocably made up my mind that the moment my position at the Bar justified it, I would try my hand at the Parliamentary game." In 1904, his income then having reached the vicinity of six thousand pounds per annum, he decided that the time had come to find a constituency. He was told that he must win his spurs, which in the language of the Conservative Party usually means taking a candidature in a constituency that has never returned a Conservative member and is hardly likely to do so. Smith could

expect little else, because all the constituencies in the vicinity of Liverpool were already represented by Conservative members. The exception was the Scotland Division, which returned Mr. T. P. O'Connor with such monotonous regularity that ultimately other parties ceased to oppose him and saved their energies and money for divisions in which there was at least some minute hope of victory. Smith took up this forlorn hope simply because there appears to have been no better prospect available to him locally. The Conservative Party had been in power for some considerable time, and in such circumstances, as Lord Birkenhead himself has admitted, the Party had small use for young men. They have their value, of course, during elections. They may address envelopes or cast into a happier environment unruly people who have shrieked from sheer boredom during an incompetent address.

Smith was soon at work in his constituency, and to this experience may be traced that facility for dealing with interrupters which made him such a formidable figure in any stern political fight, for, in the Scotland Division, a quiet Conservative meeting was a thing unknown. Nor was the task made easier by the fact that he had referred to his opponent, Mr. T. P. O'Connor, as a "conspicuous degrader" of that journalistic profession to which he belonged. In a constituency predominantly Irish, attacks of that kind were certain to bring a bitter reaction. But Smith did not mind; he had at his command weapons immensely superior to those possessed by the hecklers.

It was at this stage in his political career that, in

answer to a heckler, he made a retort which is still quoted in Liverpool. A certain Socialist who specialised in the compilation of very ingenious questions put one of his posers to Smith, but received no reply. Presently he protested, shouting "Answer my question !"

Smith did not supply the soft answer that should have dissipated the man's wrath. He said: "It isn't manners to question a candidate while you are wearing your hat."

With a sweeping gesture, the heckler removed his hat, and added: "And I'll take off my boots, too, if you like."

"Pray don't do that," pleaded Smith. "At present you are offensive only to me, but if you take off your boots . . ." The rest of the answer was lost in the roar of laughter that followed.

Even if he had an entirely hostile audience, he could hold his own. Though they might disagree profoundly with everything he said, the majority of his audience being passive, would find themselves captivated by his manner of speaking; while for the interrupters he was ever ready with a retort. The Scotland Division was good enough to practise on. What was more, it gave him the status of a candidate, and that admitted him to the inner council of the Party in Liverpool. Thus it came about that when Mr. Joseph Chamberlain visited the city in 1905, Smith was one of the favoured few who were given an opportunity of speaking and exchanging a few words with the great man.

Here was an opportunity for Smith to make an impression. An average man of his years would

have confined his conversation with Mr. Chamberlain to a few deferential expressions and a little flattery, all of which without doubt would debouch from one ear as soon as it entered the other, leaving memory unetched. Smith had another method, the efficacy of which he had already proved, and that was to indulge in some inquiry or expression of opinion which would be deemed an impertinence. That method he tried in his first utterance in the Oxford Union, where, as he has confessed, "I made an extremely impertinent speech." His method of announcing his entry as a student into Gray's Inn was also characterised by a piece of insolence. It is evident that, for his first meeting with Mr. Chamberlain, he resolved upon a similar course of action, though here, since he was looking for a career within the Conservative Party, the impertinence must be nicely tempered so as to avoid giving offence to the most influential Tory of the day. Smith contrived it very well. The story of his meeting with Chamberlain is familiar history. He ventured to question the wisdom of the policy of food taxation upon which Mr. Chamberlain had embarked. He received a frigid answer, and here Smith exercised just that measure of tact which the situation demanded. Much against his instinct he accepted the snub in silence. "Had my age and standing authorised it," he says, "I should have pursued the controversy further, for I was completely unconvinced." Still, as matters stood, he gained more by his acquiescence than he would have done by pressing further questions upon the distinguished visitor. He had yet another card

to play, for he was to speak at Chamberlain's meeting. That he spoke well goes without saying. Joseph Chamberlain was sufficiently experienced to recognise an exceptional man when he met one. At an appropriate moment he made inquiry concerning Smith's identity, and concluded the conversation by remarking to Alderman Salvidge, the leader of the Conservative Party in Liverpool: "Get him into a seat which he can win." After the rebuff that he had received, Smith could hardly expect that Mr. Chamberlain would have anything to say to him. But the unexpected happened, and nothing he could say to Smith could have been more welcome than his words. He said: "I have told Salvidge that he must get you a seat," adding the injunction that when he was returned to Parliament, Smith was to make a point of seeing him. This meeting with Mr. Joseph Chamberlain was later described by Lord Birkenhead as one of the milestones of his life; and the sequel to it he very rightly describes as another.

Mr. Chamberlain's remarks to Alderman Salvidge concerning Smith were expressed in the form of advice, but within the Conservative Party advice from Mr. Chamberlain was closely akin to an instruction. Soon after this episode circumstances arose which made it necessary for the Walton Division of Liverpool to be furnished with a new Conservative candidate, the then Member being unequal to the very stern contest which was in store for the Conservatives at the next General Election. Thus it happened that Smith transferred his gifts from the hopeless task of fighting Mr. T. P. O'Connor to the



Walton Division, already held by a Conservative. True, even in Walton the fight would be tense and anxious, but what had been won once for Conservatism might be held if a supreme effort were made. Smith was well content with the outlook.

During this period Smith had experience of that form of dissension known as a "split in the Party." It was local and it was not in his own constituency. But it was troublesome, and Smith was called upon to indulge in a little plain speaking in the interests of party unity. It is interesting to note that he took a strong line at a meeting called by the Liverpool Working Men's Conservative Association. The report records that Smith, referring to the alleged split in the Conservative Party, said he personally entertained the greatest suspicion of men who called themselves Tories, and who, by way of ventilating a grievance, wrote to the papers. (Hear, hear.) Either the people who were now dissenting from the action of the Conservative Party in Liverpool honestly entertained Conservative convictions or they did not. If they did not they had no right to call themselves Conservatives; and if on the other hand they did honestly entertain Conservative convictions before this split, and were not going to register their votes in favour of their opponent, then no more unscrupulous and abandoned piece of apostasy had been known in this world. (Loud applause.) He placed no confidence whatever in the alleged Conservatism of a man who, because not Conservative A, but Conservative B was chosen as a candidate, would give his vote in favour of a man who was pledged to the Irish alliance, who was pledged



they could not say either to Sir Henry Campbell-Bannerman or to Lord Rosebery. (Loud applause.) Thus Smith helped to end an unpleasant episode and to unite the Party.

The fight of 1906 cannot be depicted by recalling the battle cries of the campaign. To mention them now is to awake little emotion. Their re-emergence would merely produce feelings akin to those with which we inspect pictures of barnacle-covered German battleships fished up from the depths of Scapa Flow. Sufficient to say that the election of that year was one of the most tense of modern times. The tide was flowing strongly against the Conservative cause. It was with this general reaction rather than the ability of his opponent with which Smith had to contend. The electoral elements were set so fiercely against the Conservatives that the famous "landslide" which resulted from the election was foreseen by astute observers all over the country. Against the generally adverse tendency of political fortune Smith had two important bulwarks—eloquence and personality. He fought vigorously and indefatigably. While most Conservative candidates were on the defensive, Smith was attacking. Where the Conservative programme failed to attract, Smith's personality repaired the deficiency. Possibly the worst blow with which he had to contend was produced by the electoral procedure of those days. Polling then did not take place simultaneously over the whole country. Consequently, before the electors of the Walton Division went to record their vote, they knew that in certain parts of the country, notably in Manchester, the Conservatives

had been utterly routed, and that the Tory Prime Minister, Mr. Arthur Balfour, was among the lost.

*"Mon centre cede et ma droite recule. Tout va bien ! J'attaque."*

So said Foch in 1914. Smith's spirit in a dark hour was very similar, and although the time elapsing between the news of the Conservative disaster and the polling of his own constituency was a matter of hours, by dint of tremendous effort he was able to plaster the district with a slogan which typified his audacity : "Is Balfour out ? Then all the more reason for putting Smith in."

Every legitimate resource which he could employ was pressed by Smith into his service. Even the riding horses in his stables at Thornton Hough were given a hasty taste of work in harness, and were sent up to the constituency with carriages to convey voters to the polling stations.

Such energy could hardly fail to command success, even in such adverse circumstances as prevailed. When towards midnight, the final count was completed, it was Smith who took his place on the right of the returning officer ; and the monotony of the telegrams informing Fleet Street of Conservative reverses all over the country was broken by one which announced "No change" in the Walton Division of Liverpool. The majority was not vast ; a matter of about seven hundred votes, but as the victor observed : "It sufficed."

Thus Smith passed what he has described as "incomparably the greatest milestone in my career." All the opportunities which membership of the House

brings were now available to him. What was more, the circumstances which helped him at Wadham and again at Gray's Inn were, by the fortune of political warfare, reproduced within the Conservative Party in the House. Just as Wadham commended itself to Smith because it was small and intimate, and Gray's Inn appealed to him for precisely the same reason, so now the Conservative Party in the House of Commons was smaller than it had been for a generation. Many of those who had been returned came from constituencies so safe that they would return the dullest candidate so long as he happened to be an orthodox Conservative. And some of those who were returned to the House in 1906 had little to commend them but the Party label. There were few stars and a poor chorus. In such a company Smith's light could not fail to shine. Smith had foreseen this possibility. If in the realm of the blind the one-eyed man is king, what supremacy would come to him who had two eyes and uncommonly good vision? Smith came to London to join the House confident that, in the very near future, there would come to him an opportunity which, taken at the flood, would lead to fortune. Meantime, a little cross-examination of Ministers would be amusing. Thus we find that Smith's first "appearance" in the House of Commons was on the question paper for March 1st, 1906, almost immediately after his return. The inquiry reads :

"Mr. F. E. Smith (Liverpool, Walton) : To ask the Secretary of State for Foreign Affairs whether he is aware, or has received any complaints, that the Japanese authorities are preventing foreigners, other

than Japanese, from proceeding into or landing at any port in Manchuria or sending goods into the interior of Manchuria and thus seriously interfering with British trade, and if so, whether he will take steps to prevent such interference by the Japanese authorities; whether a date has been fixed for the evacuation by the Japanese troops on Chinese territory which prevents the free exchange of commerce between British traders and Chinese merchants."

Sir Edward Grey made the appropriate reply.

The incident illustrates the spirit in which Smith entered upon his Parliamentary career. But even before the voice of the Member for Walton was heard calling the number of his question, there occurred an episode, always important in the history of the House, and, on this occasion, endowed with one circumstance of particular interest to Smith. Mr. Lowther was chosen as Speaker of the House, and his election was moved by Sir Wilfrid Lawson, the "honourable and amusing baronet" (as he was described in those days), whom Smith had derided so unmercifully in the Oxford Union thirteen years earlier.

When Smith entered the House, there still lingered a tradition that it was not seemly for a new Member to make his maiden speech until there had elapsed a period sufficiently long to ensure that he had endured a considerable amount of oratory from others before inflicting his own upon the House. Then, when he had the temerity to put his views before his colleagues for the first time, he was to do it humbly, if not abjectly. "Most new Members," declares Lord Hugh Cecil, "will be wise to invoke Uriah Heep when

they address the House of Commons for the first time."

Those who knew anything of Smith's record and his philosophy must have foreseen with certitude that no regard for convention would cause him to withhold his first speech beyond the time when it would best suit his interests to deliver it ; and further, there would be no cringing humility about it.

Nevertheless, it was equally unlikely that his maiden speech would be an impetuous intervention in debate. He never underrated the importance of such opportunities, and the manner in which he should exploit them was a matter to which he devoted much thought.

To appreciate the atmosphere in which Smith's famous maiden speech was delivered, it is necessary to recall the political situation then existing. The new Parliament met on February 13th, 1906, with a Conservative representation smaller than it had ever been within living memory. The election had converted a Conservative majority of 134 into a Liberal majority of 354. Several Cabinet Ministers had suffered defeat, including, of course, the Prime Minister, Mr. Balfour, to whose misfortune had been added the humiliating experience of being struck in the face with a red herring, which piquant if plebeian article of diet had been employed as a symbol of one of the questions discussed during the election campaign.

For some time after the House assembled, the Conservatives were keenly conscious of their inferior position. The Liberals, on the other hand, were truculent. After a long period of adversity they

exulted in their victory. In the language of the hustings, they "rubbed it in." Just a month after the General Election, and while the eager partisan spirit of the campaign still dominated the House, there came up for discussion a motion expressing the recognition of the House of the fact that, in the recent General Election, the "people of the United Kingdom have demonstrated their unqualified fidelity to the principles and practice of Free Trade." The resolution continued with an expression of determination to resist food taxes and a general tariff. Had the result of the election been happier for the Conservative Party, it would have been impossible for Smith, as a new Member, to have taken part in the debate, because discussion was limited to one day, and only those who had been nominated by their Party leaders for participation were likely to catch the Speaker's eye. True, as Smith had anticipated, the Conservative team was small and weak; but even so, it included sufficient Members of recognised ability to supply an adequate number of spokesmen on this occasion. Still, he had an influential friend in Mr. Joseph Chamberlain, who approached the Speaker on Smith's behalf. The result was that Smith was accorded even a better opportunity than that for which he had dared to hope. He was called upon late in the evening, at ten o'clock, which in those days was an hour when a Member could be sure of a good attendance.

There was more than one Mr. Smith in the House, and had the new Member for Walton been hampered by a shy and retiring disposition, his golden opportunity might have passed to another member



of the Smith family. Indeed, it is said that the other Mr. Smith began to speak, but Smith of Wadham, "Don't-care Smith," was not the man to give way to any usurper. He remained upstanding until the Speaker perceived that some confusion existed, and authorised the unknown "F. E." to proceed.

The speech to which an astonished House then listened has surely received more publicity than any other speech of its kind ever delivered in Parliament. The newspapers of the following morning reported it generously, and it has been re-published many times since. I have found it in at least four books, three of which have been issued in the last few years. The need for another full report can hardly exist and I resist the temptation to include it. It is difficult to select a few passages as being the best parts of the speech, because the whole utterance was superlatively good. Here, however, are typical extracts by which it will be recalled.

Smith : It is far easier, if one is a master of scholarly irony and of a charming literary style, to describe Protection as a "stinking rotten carcase," than to discuss scientifically whether certain limited proposals are likely to prove protective in their incidence. It is far easier, if one has a strong stomach, to suggest to simple rustics, as the President of the Board of Trade did, that if the Tories came into power they would introduce slavery on the hills of Wales.

The President of the Board of Trade (Mr. Lloyd George) : I did not say that.

Smith : The right hon. gentleman would no doubt be extremely anxious to forget it, if he could ; but,



anticipating a temporary lapse of memory, I have in my hand the *Manchester Guardian* of January 16th, 1906, which contains a report of his speech. I find that the right hon. gentleman said :

“ What would they say to introducing Chinese men at one shilling a day into the Welsh quarries ? Slavery on the hills of Wales ! Heaven forgive me for the suggestion ! ”

I have no means of judging how Heaven would deal with persons who think it decent to make such suggestions. I can only venture to express a doubt whether any honest politician would even acquit the right honourable gentleman of having deliberately given the impression to those he addressed that, if the Conservative Party returned, the hills of Wales would be polluted by conditions of industrial slavery. . . .

The votes polled at the last election for Liberal and Labour and Nationalist candidates were 3,300,000, while those polled for tariff reform candidates and other gentlemen sitting around him were 2,500,000.

Cries of “ No ! Not true ! ”

I gather it is suggested that my figures are wrong ?

Cries of “ Yes.”

Smith : They very probably are. I took them from the *Liberal Magazine*. Perhaps the Minister of Education was responsible for them. . . .

. . . The Free Church Council gave thanks publicly for the fact that Providence had inspired the electors with the desire and the discrimination to vote on the

right side. Mr. Speaker, I do not, more than another man, mind being cheated at cards ; but I find it a little nauseating if my opponent then proceeds to ascribe his success to the Most High. . . .

Seven years after this utterance, Mr. A. G. Gardiner, the distinguished (Liberal) journalist, wrote : " If you examine the speech to-day you will find the wit thin and the insolence vapid. It depends for its success on the circumstances in which it was delivered."

I do not know whether Mr. Gardiner would revise that opinion to-day ; but it is certainly not one that would find general acceptance now, even if it did in 1913, which I take leave to doubt. The fact that the speech has been included in so many recent books is surely testimony, and by no means the strongest, that can be urged against Mr. Gardiner's opinion.

Be that as it may, the effect of the speech on the House can be described by three witnesses, only one of them sympathetic to Smith's political views. Firstly, Lord Wittenham, known in those days as Mr. G. D. Faber, Conservative Member for York.<sup>1</sup>

" Next to me was a young man I did not know ; good looking, tall, slight, dark, meticulously dressed. The moment came when the Speaker called the name of Frederick Edwin Smith. The young man next me rose. He held a small bundle of notes, but he did not use them. His voice was a very pleasing light baritone, and he directed it straight on to his lips, making his articulation extraordinarily distinct. There was no particular rise or fall in the voice ; the

<sup>1</sup> From *The Times*.

lips made what variations there were, but the diction was perfect. Every word was distinct.

“From those lips, for something like three-quarters of an hour, words came forth with unerring and remorseless certainty. There was no external sign of nervousness. At the end of ten minutes that voice and that personality held the House. There were no jeers from the other side, but plenty of cheers from ours. Light badinage and cutting sarcasm came with equal dexterity, in that even, magnetic voice that never faltered or failed. It was a long-sustained *tour de force*, which captivated and held friend and foe alike. His logic was inexorable, his denunciations were wonderful, his satire played like forked lightning. I had heard many maiden speeches, and I have heard many since, but this one stood and stands alone in my memory. The young new Member who had been sitting beside me, with his Parliamentary fortunes to make, rose a new Member and sat down with his Parliamentary fortunes made. He had not to wait till the next morning ‘to wake and find himself famous’; he became famous there and then, and he went on from strength to strength, like the ‘divinely gifted man’ of whom Tennyson sings.”

Equally vivid is the description of Mr. T. P. O'Connor, who had no reason to exaggerate Smith's success. He is writing only a few weeks after the speech, while his recollection of it was still fresh. “Mr. Smith got up from the poor, thinned ranks of a broken and disheartened Opposition to address an assembly in which his political enemies were in hundreds of a majority, and

where there was the somewhat impatient and scornful restlessness of a majority enjoying omnipotence after nearly a generation of unbroken disaster. The immediate and delighted cheering which Mr. Smith got from such an assembly was not in the least due to any concession on his part. On the contrary, never was a speaker more self-assured, more defiant, more scornful of his opponents; his look amounted almost to a challenge. Even his attitude was provocative. He stood with his hands in either his waistcoat or trousers pocket during the entire speech, and faced his audience with a look open, straight and scornful; and in every tone of his voice there was the ring of studied contempt. I do not know how deep are Mr. Smith's convictions. It is possible that he feels as strongly as he speaks; but if ever there was a man who gave an idea of regarding with intellectual contempt and scorn the opposite party, it was this youngster that poured out his envenomed and brilliant invectives with his hand in his pocket, with his short upper lip in almost a perpetual curl, with a rancorous note of contempt in every tone of a voice low, but rich and penetrating, and with a certain boyish and almost impudent air of defiance, that might be called impertinent if he were not so young and so brilliant. But the bitterest enemy in the House was compelled to listen to the speech of a fine speaker and to applaud it."

Next we have the *Daily Chronicle*, which was then, and for many years afterwards, the most ably conducted of the popular newspapers. Said the political correspondent of that journal: "The topic

of to-day in political circles will be the maiden speech of Mr. F. E. Smith, Member for the Walton Division of Liverpool. In sheer brilliance it was probably the most striking maiden speech delivered there since Lord Randolph Churchill's. Indeed, it recalled Lord Randolph in more ways than one. It was most studiously phrased, it was studiously deliberate, it was excessively witty, and it was impertinent beyond description. The delight of the front Opposition Bench was pathetic. They rolled about with delight. You could have placed an apple in Mr. Austen Chamberlain's laugh at any moment. Mr. Wyndham jumped with joy; Sir Edward Carson was so happy as to look almost human. Mr. Smith lashed Liberal Members, official and unofficial, one after the other, and so cleverly that not a single one could attempt to reply. Without doubt the speech was a great success.

"But it had two faults which Lord Randolph could never have committed. It was often strained after effect, merely sophomoric in its diction. 'A cacophonous frenzy of inexactitude,' for instance, is so cheap as to be within reach of the humblest. And it was far, far too long. Many Members who were delighted with twenty minutes of it, had walked out before it had reached forty minutes."

The *Daily Chronicle's* comment appeared on the morning following Smith's speech. It was, probably, written in the House, and it is interesting to note that shortly before it was written, Mr. Joseph Chamberlain, in private conversation with Smith, made the same criticism of the length of the speech. The *Daily Chronicle* being hostile to Smith and Mr.

Chamberlain being friendly, the two opinions are not couched in identical terms, but if the political bias of the Press opinion is discounted, its point is the same as that conveyed by Mr. Chamberlain when he turned to Smith, and said: "Very good; but you made one very great mistake. You put far too many good things into one speech."

Too many of the ingredients of Smith's speech were taken from the same shelf. It had too much wit. A page of jokes and aphorisms, however cleverly they may be conceived, can become tiresome, and the magazine containing them will be thrown aside. Similarly, a speech contrived with the greatest cleverness and ingenuity will fail to hold its audience after a certain time, if its contents lack variety. Considered individually, every constituent part of Smith's speech was excellent, but it played too much on the same emotions; it lacked variety and contrast. Nevertheless, as a maiden speech it surpassed any previous performance in the House; and undoubtedly it remains unequalled by any since.

If you can meet with triumph and disaster  
And treat those two impostors just the same——

Smith's demeanour in the hours of misfortune which came later may have fallen short of the Kipling standard; but his treatment of the triumph that was his in 1906 showed that he valued public applause and adulation at no more than their worth.

The House of Commons, with its usual generosity, bestowed compliments copiously upon him. As for the world without, one commentator observes: "Countesses caressed this gifted son of a Birkenhead



auctioneer. Duchesses flattered him. Wives of mere baronets wondered with a flutter whether he would be able to come to their parties and receptions. It was a case of roses, roses all the way for Mr. Smith."

But Smith appears to have accepted this lionising without losing his sense of proportion. For a few months he shuttled between Mersey and Thames, discharging his duty to his Liverpool clients with his usual efficiency, but contriving to attend the House to sip with moderation the heady wine which is offered so liberally to those who have proved that they can command success.

Smith's first impressions of the House as an audience are recorded in an interview published in May 1906. He said: "I was immensely struck by the kindness and indulgence with which I was listened to as a new Member by every section of the House, and by my opponents on the Government side, whose consideration was all the more gratifying because I was hardly conciliatory in my demands."

Naturally, after such a resounding success, the House was eager to hear Smith again. There had been instances of Members making remarkably good maiden speeches and then failing utterly to sustain the standard of their initial effort. A day came, nearly three weeks later, when the cry "Smith is up!" (so often heard in later years) went round the lobbies and the ante-rooms. Doubtless some of the Members hurried into the chamber ready to guffaw. If so, they completely misunderstood their man. Smith had given them light comedy on the last occasion. He could never hope to repeat the success that he had



achieved in that line. It would have been folly to attempt another effort of a similar kind. Here was an opportunity for contrast, and he gave the House an incisive, well-reasoned criticism of the Trades Dispute Bill. It dealt largely with the legal aspects of the measure. This subject, in other hands, might have been oppressively dull, but Smith made it interesting. Those Members who had entered in expectation of hearing biting sarcasm and pounding hoofs of verbal cavalry, remained, held by the intrinsic merit of the speech.

"This fellow," they said, "has depth. He will go far."

That was precisely Smith's intention, and, in pursuit of it, he decided to base his activities upon London. He took chambers in the Temple, and again, presumably, because he "cared greatly for beauty," he installed himself in a building in Elm Court, which commands a view unsurpassed by any in the Temple. His horses were moved from Cheshire and he renewed his acquaintance with the Oxford country where he had ridden occasionally in his 'Varsity days. Later he acquired a house in Eccleston Square, which became the shrine of that happy domesticity concerning which he quoted more than once :

To make a happy fireside clime  
To weans and wife  
That's the true pathos and sublime  
Of human life.

As "T. P." discovered : "This terrible railer, this apparently scornful and rancorous political enemy, is socially pleasant and genial."

## CHAPTER VI

### THE FASHIONABLE ADVOCATE

PROMOTION at the Bar can be accelerated but its high places cannot be taken by such a vault as that which brought Smith into the front rank of the Conservative Party. Success in the House could not do other than help him in professional practice. Thus, his removal from Liverpool to London, made soon after his maiden speech had brought him fame, was accomplished in circumstances that caused no set-back to his material prosperity, but actually enhanced it.

His mastery of the law governing workmen's compensation and claims for damages arising from accidents brought him much county court business. It was remunerative work, his clients being usually big industrial concerns or transport companies. But the work involved appearances before county court judges, one or two of whom were apt to treat Smith in a manner which he resented. After all, his worst enemy could not call him a "petty attorney." He had passed his Bar examination with great distinction, and he had appeared in cases with the leading "silks" of the day. Further, his temperament was such that he would not defer readily to any but those who were, demonstrably, his intellectual superiors,

and, quite plainly, he did not consider that the county court bench of his day accommodated many persons in that category.

In these circumstances clashes became inevitable. Rarely, if ever, were they due to a loss of control on Smith's part. He was quite definitely of opinion that there were occasions, though rare, and usually jury cases, when a counsel's duty obliged him to stand up to the judge. One of these occasions, he has suggested,<sup>1</sup> is when "the advocate is of great reputation; the judge of less, and clearly wrong."

This conception of his duty, strengthened no doubt by that policy of calculated insolence which had served him well on certain vital occasions in his career, was responsible for one or two "scenes" in courts in which he appeared.

"Ephesian"<sup>2</sup> recounts the most notorious of these clashes. In that episode Smith terminated some razor-edged repartee with the remark: "I who have been listened to with respect by the highest tribunal in the land, am not going to be browbeaten by a garrulous old county court judge."

A similar exchange, of equal warmth, occurred in 1907 in a county court case. The "breeze" is thus reported in the Press of the day:

In the course of the hearing his Honour overruled a question put by Mr. Smith, who, somewhat nettled, said: "If your Honour would only be good enough not to interrupt me——"

<sup>1</sup> *Law, Life and Letters.*

<sup>2</sup> *Lord Birkenhead.*

His Honour : I shall interrupt you and any other counsel when it is necessary.

Mr. Smith : I rather gather from your demeanour that you probably will.

His Honour : Yes, I shall.

Mr. Smith (bitterly) : So I see. Will you permit me now to tell you what the submission is I wish to make ?

Mr. Smith was later putting a long list of absences from work to the plaintiff when his Honour asked : " Why have such a lot of argument in all these matters that you will have to call witnesses upon ? "

Mr. Smith (with some heat) : Do you propose to rule that the questions are inadmissible ?

His Honour : I ask you whether you desire to continue further with these questions ?

Mr. Smith : You may take it from me that I desire to continue further as long as I put the questions.

His Honour : You are exceedingly rude.

Mr. Smith : It is not uncommon in this court.

Further on, after some heated argument, his Honour observed : " Proceed with your examination. "

Mr. Smith : If your Honour will allow me I will, but I am not going to proceed when I am interrupted constantly with irrelevant observations. After a pause, to a witness : Will you explain that to his Honour ?

His Honour : No, not to me ; but to the jury.

Mr. Smith (to the witness) : Describe it to the jury. His Honour doesn't want to hear you.

Later a question relating to the effects of a disease was under discussion, and his Honour remarked : "The learned counsel knows everything."

Mr. Smith, with much hauteur, retorted : "I am a humble imitator of your Honour, although I don't make so much noise."

After his Honour had put several questions to another witness, Mr. Smith asked : "May I ask a question on your Honour's cross-examination ?"

No.

I am not allowed to ask a question on your Honour's cross-examination ?

No.

Mr. Smith : I am extremely obliged to you for your courtesy.

That these passages of arms were not due merely to the accidental contact of irascible age and insolent youth is made clear by a communication published in the *Law Journal* shortly after Lord Birkenhead's death. The correspondent was an eye-witness of the episode which he relates. He says : . . .

At or about the time when he (Smith) came up from Liverpool there was in London a county court judge under whose tyranny solicitors and members of the Bar had suffered for many years. This judge never hesitated to express his poor opinion of the advocacy of those who appeared before him ; he would interrupt on all occasions, relevant or irrelevant, and humble the advocate in the presence of his client.

A firm of solicitors who had endured this tyranny for many years briefed F. E. Smith for the plaintiff

in a jury case, in the hope that a blow might be struck for freedom. Mr. Smith had hardly begun the opening of his case to the jury when the judge intervened by asking him if it was really necessary to go into all these details; whereupon Mr. Smith, with deliberate and unhurried insolence, demanded: "How dare you interfere when I am addressing the jury?" Further encounters took place in a court packed with keen observers of the fray; and it was soon obvious that the judge was not doing well. Finally, Mr. Smith advised the jury not to pay any attention to anything which might fall from the lips of the old man (or old woman) on the Bench; whereat the judge cried out that Mr. Smith was abominably rude.

Said Mr. Smith: There are two classes of persons who may be so described; those who deliberately intend to be rude, and those who are rude because they cannot help it. I belong to the former class; your Honour to the latter.

A few days later the judge resigned and the county courts knew him no more. . . .

Smith's appearances in the county court were notable, but not very numerous. Such was his versatility that one day he would be pleading in a workman's compensation case in a local court, and the next day would find him making an appearance in litigation which had aroused the interest of the whole country.

Such a case was the Lever libel action of 1906, in which the firm of Lever Brothers sued certain newspapers for damages arising from an alleged libel. In



the summer of 1906 there had been in progress in the soap industry certain changes which we now know as "Rationalization," the result of which was to extend considerably the influence of the Lever firm. Naturally, these developments attracted the attention of the newspapers. In one section of the Press this attention was more sustained and pertinacious than is customary in such circumstances, and, after a time, statements were made which the Lever firm could not afford to ignore. Mr. W. H. Lever felt that the honour of the firm could be vindicated only by an action for libel being brought against the newspapers concerned. According to the present Lord Leverhulme, Mr. Lever was advised in London that "owing to the state of public feeling, the jury would be unlikely to give a verdict in his favour; but a different view was held in Liverpool." Mr. Lever's solicitor "laid the case before Mr. F. E. Smith, who, after sitting up most of the night studying the papers, gave the following brief but emphatic opinion: 'There is no defence to this action; the damages must be enormous.'" On the strength of that opinion, Mr. Lever decided to go forward, and, on July 15th, 1907, the case began. Rarely has such an array of eminent counsel been briefed in a single case. On the plaintiffs' side appeared Sir Edward Carson, K.C. (now Lord Carson), Mr. Horridge, K.C. (now Mr. Justice Horridge), Mr. F. E. Smith, and Mr. E. G. Hemmerde. Opposing them were Mr. Rufus Isaacs, K.C. (now the Marquis of Reading), Mr. H. E. Duke, K.C. (now Lord Merrivale), Mr. Norman Craig and Mr. G. A. H. Branson (now Mr. Justice Branson).

In the result, Smith's terse but emphatic opinion was abundantly justified. Immediately after the first witness (Mr. Lever) had given evidence, the case came to an abrupt termination by the withdrawal of the statements upon which the Lever firm had taken action. The defendants agreed to pay £50,000 as damages. Nor was that all. Certain actions arising out of the same matter were triable in Scotland, and altogether the sum awarded by way of damages reached the respectable total of £91,000, a figure which fulfilled Smith's confident prediction "the damages must be enormous."

Thus Smith's legal career continued, the great and the trivial alternating, though we may be sure there were no trivial cases so far as the fees were concerned. And always there was the Ogden litigation smouldering and sometimes bursting into flame.

Customarily, ten years at the Bar is the minimum measure of service with which a man can hope to qualify for the patent of a King's Counsel. Smith was called to the Bar in June 1899. He took silk in February 1908—a little over eight and a half years after his call. In addition to the distinction of having achieved this promotion in appreciably less than the usual time, Smith became and continued for some years to be, the youngest King's Counsel in the country.

Shortly after he had taken silk Smith was engaged in a very interesting and important appeal to the Privy Council. The earthquake in Jamaica, in January 1907, had destroyed much property and had caused considerable loss of life. Insurance policies, as

is usual, contained a clause relieving the companies of responsibility in a fire which was due to an earthquake. The cases of the policy holders, first heard in Jamaica before judge and jury, were based on an assumption that the fire started before the earthquake. A number of English barristers were retained to conduct the proceedings in Jamaica, and Smith was asked to form one of the party. He was unable to go owing to a multiplicity of professional engagements in England, and Mr. E. G. Hemmerde, K.C., went in his place. He was, however, able to assist by representing the policy holders when the evidence of a distinguished seismologist was taken on commission in London. Smith cross-examined this witness very closely upon his scientific testimony, a task of no small difficulty.

The verdict was in favour of the policy holders, and a local appeal failed. The companies concerned then appealed to the Privy Council in London, on the question whether the verdict could be justified by the evidence given.

Smith was able to accept a brief, with other counsel, for the policy holders when the appeal came before the Privy Council, and according to Mr. Hemmerde, Smith spent days with him discussing the line of argument they should take.

Naturally, in the confusion of the earthquake, fires, and rescue work, the witnesses were not unanimous as to what happened. Counsel for the policy holders urged upon the Privy Council that the evidence of the mate of a ship lying in Kingston Harbour at the time of the earthquake was given on the fact. The

mate's evidence was providential. He proved that he had seen a pillar of smoke rise from the town before the earthquake occurred. This important testimony stood unshaken after a hearing lasting eleven days, and the original verdict for the policy holders was upheld.

Though it would be impossible to review, even in outline, all the important or celebrated cases in which Smith participated during this phase of his career, there is one trial which it would be wrong to omit, though it has been told and re-told a hundred times—the prosecution of Hawley Harvey Crippen for the murder of his wife, and the arraignment of Crippen's mistress, Ethel Le Neve, on a charge of being an accessory after the fact.

The case had no special legal significance. It came within the category of a murder committed by a husband intent upon removing an unattractive wife in favour of an attractive mistress. But public interest in the case was immense, because it possessed all those elements which are found, as a rule, only in fictional stories of crime. Further, the accused man and his mistress were almost homely, everyday folk, a circumstance that imparted reality to a narrative which, as a novel, would have been rejected by some readers as implausible.

The charge against Ethel Le Neve, of being an accessory to murder after the fact, would have been satisfied by her assisting Crippen to escape from justice knowing he was a murderer. Knowledge of the crime was the vital issue in her case. At the trial, at the Old Bailey, on October 25th, 1910,

before the Lord Chief Justice of England (Lord Alverstone), Sir Richard Muir, prosecuting, tried to put Smith in the position of having to prove that Miss Le Neve was not guilty. Smith saw the snare and declined to be caught by any such "bilking" of that elementary rule of English law that the prisoner is held to be innocent until the contrary has been proved. It is only when the prosecution's evidence has established a case that the defence is obliged to provide an answer. In Smith's opinion the Crown did not prove their charge, and he took his stand accordingly.

The prosecution stressed the guilty relations between Crippen and Le Neve. The woman, argued Sir Richard, had been ill about the time of the murder of Crippen's wife and became suddenly worse. She fled in disguise with Crippen. She must have seen, at Antwerp, argued the prosecution, newspapers containing the news of the murder. The only inference was that she had guilty knowledge. What explanation had she to offer?

Smith was able to establish that Miss Le Neve's illness occurred during Mrs. Crippen's lifetime, and her recovery at about the time of the murder. Indeed, he stated that the improvement was traceable to the news, given to her by Crippen, that his wife had left him. Miss Le Neve regained her health and spirits at the prospect of attaining respectable status as Crippen's wife. The flight in disguise was explained by her belief that Crippen had done nothing, but was likely to be arrested on suspicion. The English newspapers had not been seen by her at Antwerp. She

knew nothing of the murder, Smith argued, because Crippen had no reason to entrust his guilty secret to her.

Smith submitted that the prosecution's case failed, and his submission was justified, as the summing-up showed. His client was acquitted. Later, Lord Birkenhead asserted that, having studied all the facts closely, including much that did not come up in evidence, he was satisfied of the woman's innocence both as an ally in the murder and in its concealment.

Smith was now becoming as familiar a figure in the courts as were those eminent lawyers who had reached the front rank after spending the better part of a lifetime in hard work and steady but slow advances in their profession. Smith, on the other hand, was not yet forty. What was more, being slim and of youthful countenance, he looked juvenile among the colleagues with whom he so often appeared. In the courts his speech showed the same fluency and ease as it did on the public platform, though he was apt to be discursive in his opening, and prone to reiteration. These weaknesses, however, were more than counterbalanced by his ability in cross-examination, where his alertness of mind and sharpness of wit not only proved the undoing of many a cunning witness, but were responsible for retorts which are still quoted at the Bar as examples of *le mot juste*.

At this time, Smith might well have been styled the "fashionable" advocate. This, not because he was briefed by Society delinquents and litigants, but



because for almost every *cause célèbre* his services were sought by one side or the other.

And since that which is fashionable is never inexpensive, Smith prospered greatly.

Nevertheless, while Smith the advocate was advancing, Smith the politician was by no means idle.

## CHAPTER VII

### THE YOUNG TORY

**F**EW men can have crowded more activity into their lives than did Smith during the early years of his political career. Many men have had the House of Commons and the Law Courts as a joint workshop, and have considered they were doing well if they contrived to give a moderate measure of attention to the demands of each place. Smith was not satisfied with ordinary standards. At the Bar, as has been seen, he had considerably more than the average amount of business entrusted to an advocate of his standing. In the House of Commons he made a carefully-considered contribution to debates on the average about twice a month, and was frequently in evidence making casual interventions to the delight of his own Party and the embarrassment of the Government. His service to his Party, however, was not confined to the House of Commons and to his own constituency. The whole country was tremendously interested in this young Mr. Smith of whom so much was published in the law reports, in the political news, and in the form of character sketches and interviews. Conservative organisations everywhere wanted to see and to hear him. Nor was Smith unwilling that they should satisfy that praiseworthy desire. He seemed to be here, there and everywhere

at the same time. The morning papers would report a speech he had made in the North of England. The evening papers of the same day would contain Smith's name in the headlines above a report of a famous case. Next morning his name would figure prominently in the Parliamentary reports and, possibly, *The Times* would be carrying a lengthy letter from him. Occasionally he found time to contribute an article to a newspaper. There were dinner speeches also, but he does not appear to have attended, at this stage of his career, so many of these functions as he did during the last few years of his life. Always a believer in the sheer necessity of exercise, Smith did not forgo active recreation even at the busiest periods of his life. He acquired a small country residence at Charlton, Northamptonshire, to which he and his wife and two children retired at week-ends. He hunted occasionally, played tennis frequently, and it is recorded that, even after his return to Parliament, he appeared in Rugby matches and acquitted himself creditably. He improved his knowledge of the Continent by holidays abroad during the vacation, and he made a visit to Canada.

In these circumstances, it is not surprising to find one scribe warning him that he must "take in sail," while T. P. O'Connor wrote: "His peril is the ardour of his temperament. He lives at top speed."

Such well-meaning cautions, however, were based upon the assumption that Smith was a person of normal physique and mental capacity. He was neither. The work which he shouldered could only have been borne by one endowed with an exceptional

constitution, while the quality of his speeches is sufficient evidence of the extraordinary intellectual capacity of the man. The plainer does this become when it is borne in mind, in reading his speeches, that so many matters were pressing upon him for attention that little preparation could have gone to their making. The speed at which his mind worked was often an embarrassment to the journalists in the Press Gallery of the House. He spoke much too quickly. Nor, when he became aware of this defect, did he find it easy to bring his flow of words to the right *tempo*. Indeed, it was not until 1909, three years after he entered the House, that one of the Gallery correspondents was able to write: "Backed by tremendous determination, he is endeavouring to speak at a speed at which it is more humanly possible for his victims to grasp one thing before he has raced on to the next. Up in the Press Gallery there are some men who are almost miracles for rapidity in shorthand writing, but I have seen men watch F. E. rising with a look of pain."

During those early years in the House, Smith interested himself particularly in education, licensing and the House of Lords, but on one occasion he was able to show the House that he could handle, with ability, subjects more profound than those which formed the small change of current politics. In February 1908 he treated the House to an erudite discourse on the law concerning the capture of private property at sea. Even this, however, had a passage characteristic of its author. Towards the end he said :

“When we are asked to consider what the Admiralty’s view upon this question is, we are surely entitled to make one or two observations upon the position of the Admiralty in relation to proposed reforms in the past. It will be in the recollection of the House that many years ago the Admiralty produced cogent, convincing and conclusive arguments to show that steam could not be adapted to the use of ships of war. Shortly afterwards they produced another statement, conclusively proving that armoured plate could never possibly be used for ships of war. The Admiralty, however, having made mistakes in matters of this kind, which were proper subjects for naval experts, must not be supposed immune from the possibility of mistake in a case which, in its legal and commercial aspect, is not a question for naval experts.”

There was greater scope, however, for the characteristic touch in his addresses on licensing, and in one of these his caustic wit made certain Liberal Members very uncomfortable. Smith was protesting against a measure which, while it made for a reduction of public houses, did little or nothing to control the multiplication of clubs. When it was passed, the Bill might close a public house, but it could do nothing to prevent the opening of a drinking club a few doors from the premises of the former hostelry. Said Smith :

“I do not hesitate to say that sitting cheek by jowl with these moral reformers are men who owe their seats in this House to the exertions of political clubs which, although they are not drinking clubs,

are places where drink is supplied with the same facility with which it is supplied in public houses, and where it can be obtained at hours when public houses are closed, as well as on Sundays. . . . I believe the honourable Member who represents Walthamstow is a convinced supporter of this Bill and is in favour of Sunday closing. How are his supporters generating their zeal on his behalf and amusing themselves on Sunday mornings at the Walthamstow Liberal and Radical Club? Here is the programme of a Sunday morning's entertainment." Then Smith proceeded to catalogue the names of a number of very attractive variety artists announced for the morning, and pointed out that, on Sunday evening, a well-known comedy was presented. "Then what do we find in the constituency of the Parliamentary Secretary to the Admiralty, at the North Camberwell Radical Club. We find entertainments are going on in precisely the same way. What do we find in the Camberwell Club? The Club advertised, Sunday morning: 'Lecture upon the Principles of Malthus.' Sunday afternoon: 'Musical Comedy, The Hypocrites!' Honourable gentlemen opposite cannot afford to deal with the clubs. They dare not. Their political lives are not worth a moment's purchase if they do. . . . The Chancellor of the Exchequer (Mr. Lloyd George) talks about going down with all the ship's flags flying. The ship, Mr. Speaker, is the S.S. 'Whited Sepulchre,' and has the Jolly Roger flying from the mast."

Smith was not throwing these stones from the threshold of a glass house. In his own Conservative Liverpool there was not a single working men's club



where liquor could be obtained. They were, and always had been, "dry" institutions.

He took pleasure in poking fun at those earnest advocates of abstinence or prohibition who, in his view, had the drink question badly out of focus. "*Vox populi, vox Dei*," he quoted to such a Member on one occasion, adding, "but it speaks with a hiccough unless the Hon. Member takes proper precautions." To another reformer who had spoken to a P.S.A. congregation about Members of Parliament "who know they are in danger of falling from this evil," he tendered his thanks for leaving these weaker brethren unnamed; "but," he continued, with studied suavity, "the right honourable gentleman greatly qualifies the pleasure which I shall have in sitting next to him at dinner."

A critic who aimed his criticisms so directly at individuals as did Smith, is fortunate if he escapes the charge of having indulged in "personalities." That allegation was often made against Smith from the beginning to the end of his Parliamentary career. The justice of the charge is, in many instances, open to question.

In adjudicating in such a matter, regard must be had to the custom of the period. Even as recently as the time now under review, political criticism was more robust than it is to-day. That, however, is by no means the only consideration affecting the matter. Whether a blow is or is not below the belt, depends upon the simple issue of where the belt is worn. Apparently its position is sometimes so difficult to define that considerable reflection is necessary to

determine whether an unfair blow has been struck. I have seen a person in an audience roaring with laughter at sallies which, later, the same man, now wearing a smug expression, alleged to be "personalities" which ought not to be allowed to enter into enlightened controversy.

On one occasion Smith was accorded a censure in headlines because he described Mr. Augustine Birrell as "that type of man who would still be fiddling if all his colleagues were burning." Many years later, as recently, in fact, as February 1928, we find Mr. Lloyd George reported as saying of Mr. (now Lord) Bridgeman: "In his anger Mr. Bridgeman was very rude. Mr. Bridgeman is a comfortable, sleek, rather heavy gentleman, but when fat catches fire it is very unpleasant, and so was he." No comment need be made upon the admissibility of this picturesque allusion. Mr. Bridgeman did not whine. Yet a little later when Mr. Baldwin, remembering the popular expression, "reeking of money," made an observation about the odour of certain candidates financed by "the Lloyd George Fund," the leader of the Liberal Party was exceedingly indignant. Indeed, his indignation came near to providing the spectacle of burning which he associated with the name of the genial Mr. Bridgeman.

The extraordinary attitude which numbers of people adopt towards this question of "personalities" in controversy must surely be an expression of that side of the national character which causes the British people to be condemned for hypocrisy. The plain fact is that no type of speaker is more

admired by the average audience than he who will address his criticism fearlessly to the person to whom he means that criticism to apply, and if he finds it necessary to criticise the character of a public man so far as it is relevant to a public issue, he cannot be considered irregular. The quality of service rendered by any public man is determined to no small extent by the quality of his character, and it is difficult to see how the personal element can ever be entirely divorced from political controversy except by the general acceptance of a standard of mealy-mouthed oratory which would add considerably to the reputed insincerity of politicians.

When Smith set out to correct an individual, the chastisement which he inflicted was usually the more severe because his utterance was so unemotional that the censure could not be attributed to ill-temper. To this statement, however, there are exceptions. On one occasion his indignation was so obvious and his invective so overdone that he failed of his purpose. That occurred a year or two before the War, when he said to a West Country audience: "You have had the unspeakable honour of a visit from that distinguished statesman of European reputation, Mr. Acland. If anyone were asked who were the two most distinguished men in England at this moment, he would probably mention Lord Roberts as one, and, I suppose, he would mention Mr. Acland as the other. Lord Roberts, who has fought for the Empire on many a bloody field, who saved the Empire in one most supreme crisis, has sacrificed his leisure in the evening of his days in a supreme task of patriotism.

What happens ? A priggish underling, a man of not the slightest account anywhere, who, while Lord Roberts is saving the Empire, I will undertake to say will be losing the only thing he had got—his seat—has the insolence to come forward and lift his tiny little tongue and squirt out his feeble little venom at a man old enough to be his grandfather and great enough to make people forget that Mr. Acland was ever born.”

There was another occasion on which it appeared, at first, that Smith had used the blunderbuss instead of his usual rapier. But here it would seem that first impressions were wrong, and that Smith was the victim of journalistic condensation or of inaccurate reporting. The affair was an attack upon Mr. Drysdale Woodcock, a Liberal candidate who was contesting Southport, in which town the episode is still recalled. The first report of the matter as published in the Liberal Press was as follows :

“Mr. F. E. Smith made a remarkable and characteristic speech at Southport last night. It is suppressed by the Tory papers generally. The report says :

“‘Mr. F. E. Smith said he had inquired of members of the King’s Counsel and of the Junior Bar, but he had found no one who knew Mr. Drysdale Woodcock, the Liberal candidate.

“‘He had seen a photograph of Mr. Woodcock, and had never seen anything like it in his life. He would have thought he would have found a place in a menagerie. (Laughter.)

“‘He would not trust Mr. Woodcock with a flea if he had one.

“ ‘Why not put Mr. Asquith, Mr. Lloyd George, Mr. Redmond, and the other leaders of the Liberal Party on a pedestal and fall down and worship them?’

“ ‘That watch-dog, Mr. Woodcock, said ‘Pass the Veto Bill.’ . . . He thought Mr. Woodcock would have wagged his tail at a Referendum, for the Southport people had been enthusiastic over local option, which was the same thing.’ ”

When this report came to Smith’s notice he gave his own version of the speech. He said in a letter to the *Liverpool Courier* :

“ You ask me whether the reports recently published in a speech of mine at Southport are accurate. They are inaccurate, garbled, and bear every sign of intentional misrepresentation.

“ The friends of Mr. Woodcock are concerned to maintain the charge against me of treating him with unprofessional harshness. Mr. Woodcock, himself a member of the Junior Bar (whose name I had never mentioned and of whom I had never heard), publicly and repeatedly referred to me on my own circuit as ‘Young Freddy Smith,’ ‘Young Fred Smith,’ ‘Fred Smith,’ with other observations of impertinent familiarity which it is not necessary to recall. Under these circumstances I went to speak in his constituency, and I certainly did not feel called upon to observe my rule, upon which you are good enough to congratulate me, of not attacking Liberal candidates in those many constituencies in which I have spoken during this election.

“ The Liberal Press alleges that at my Southport meeting I produced Mr. Woodcock’s portrait and said

he was only fit for a menagerie. This is a deliberate untruth. I produced a grotesque picture which he had been ill-advised enough to circulate in the constituency, depicting a head which, I was told, was his, inartistically tacked on to a body which might be either that of a dog or a lion. I held this absurd production in front of the audience and, of course, of the reporters, and said of it, and of it alone, that it would appear to be suitable for a menagerie. Any candidate who is guilty of such an absurdity exposes himself to such ridicule. The dishonesty is manifest of attributing to me the comment that Mr. Woodcock's proper portrait showed him to be fit for the menagerie. I am accused in the second place of saying that I would not trust Mr. Woodcock with a flea. Such an observation would be wholly unjustifiable, and might be reasonably construed as a reflection upon his integrity. I never made it. Underneath the ridiculous picture I have described was written the magnificent, the magniloquent legend, 'Trust Woodcock. He will fearlessly guard the people.' In elaboration of my argument that Mr. Woodcock would be completely helpless should he be returned to the House of Commons as the Member of a Party dependent upon the Irish vote, I made the observation, 'Guard the people. I would not trust him to guard a flea.' Here again the intentional perversion of my actual words is apparent and needs no comment. . . .

"I make it my habit not to make gratuitous attacks upon Liberal candidates, but if members of the Bar to whom I have given no provocation think it worth their while to make contemptuous attacks upon me,



my age, and my standing, I shall continue to administer correction to them, even if such correction makes it necessary to point out the obscurity of those who employ such weapons.

"I note with particular satisfaction that the electors of the Southport Division appear to share my view of Mr. Woodcock's pretensions. I have nothing to add and nothing to qualify. Should I be gratuitously assailed in the future, I shall make suitable reply. If I am not I shall pursue my practice of ignoring personal issues."

Even when the explanation is considered, the affair does not provide a particularly sparkling example of Smith's invective. More typical perhaps is his allusion to a visit of investigation with which Ireland was honoured by what he described as a collection of "dull and stupid bores who call themselves the Eighty Club. They have gone with one another because they could find no one else to go with. And the most eloquent among them could not command the attention of a dinner audience in the House of Commons." The mention of a "dinner audience" suggests that Smith, for all his eloquence, must have been detailed at some time for the unenviable duty of keeping a debate going while all but a sprinkling of Members were absent at dinner.

Nor was Smith afraid to criticise even so powerful a newspaper as the *Daily Mail*, which then, as now, was popularly regarded as being a Conservative newspaper, but which pursued an independent course whenever it pleased its owner to

do so. Smith's complaint against it was voiced thus :

"I have spent some years in combating the Cocoa Press, and being by nature a man very sensitive to public criticism that struggle has caused me great pain. That was in no small degree aggravated when I found myself also opposed to the *Daily Mail*. I have always been a most loyal supporter of the *Daily Mail*. Years ago when Mr. Chamberlain introduced his Tariff Reform proposals and the *Daily Mail* said it was opposed to them because they constituted a stomach tax, being at that time a young and simple man with a great belief in the power of the Press, I said 'The *Daily Mail* must be right. Down with the stomach tax.' Four days later I opened the *Daily Mail* and read, 'Mr. Chamberlain's great campaign. Triumph of Tariff Reform necessitates a tax on corn to cement the Empire.' I, like the *Daily Mail*, have always had a mind open to conviction, so I said 'Certainly,' and I have spent four or five years of my life backing up the *Daily Mail*. Three months ago I found a leading article in the *Daily Mail* which said that Tariff Reform was dead. Where are we? In the words of the American humorist, 'Are things what they seem or are visions about?' No one has followed the *Daily Mail* more faithfully than I have done. When they said to me, 'Do not buy Trust soap,' I did not, and when they told me that there was a massacre in Peking I bought crape. I think it rather hard that in the middle of my political life I should be left with only two matters in regard to which I can give them ungrudging support, standard bread,

and sweet peas. . . . I make this answer—that the men who stand upon this platform take their politics from no Trust Press.”

Musketry draws musketry. Smith’s invective did not go unanswered, though I have been unable readily to discover any replies that matched the attacks which provoked them. To call him a “perky platform platitudinarian” was an original essay in alliteration, but nothing very serious as a gibe. Better perhaps was the retort of the *Liberal Magazine*, which, when he spoke of Liberals floating into Parliament like corks on the top of a dirty wave, remarked, apropos of Smith’s views on licensing, that perhaps he wished to replace the corks by bungs.

On one occasion, about the time of his first election to Parliament, the ever-dignified *Liverpool Daily Post* was a trifle cross with Smith because he called Mr. Austin Taylor a “political hermaphrodite,” whereas Mr. Taylor was, to quote the *Liverpool Daily Post*, “one of the most respected and conscientious Members of the House of Commons.” Since Smith was inclined to take pleasure in baiting extreme respectability, the censure of the newspaper was no doubt richly merited. But Smith answered back. He sent a letter which was acknowledged in a prominent position in the following terms :

#### MR. F. E. SMITH AND THE “DAILY POST.”

We have received from Mr. F. E. Smith a letter couched in terms which we could not be expected willingly to publish, and inasmuch as he informs us that, “to ensure the appearance of his letter,” he has

sent a copy of it to the *Liverpool Courier*, we feel relieved of the necessity of wasting any further space upon it, *or him*. . . .

This little exchange did not terminate with the further rebuke of the *Liverpool Daily Post*. Twenty-two years afterwards Lord Birkenhead supplied the last word in the course of a speech at the Liverpool Press Club. He referred to the refusal of the *Liverpool Daily Post* to publish anything further about him, and added: "I was pained, but not unduly discouraged, because I obscurely surmised that in the span of life that remained to me I might make statements which even that paper might find it inconvenient entirely to suppress."

There is an equally admirable touch in the preface to his first book of speeches.

"My political opponents in the North of England," says Smith, "not infrequently do me the honour of quoting my speeches. . . . On the whole it is an advantage, if one is to be quoted at all, that the quotations should be accurate. For this reason I am content to give critics the advantage of finding in this volume much material for attack." How many opponents were so conscientious that they purchased Smith's book to ensure that their quotations should be correct, is not ascertainable.

These extracts from a variety of speeches and writings are not in chronological order, but they serve to show the type of controversialist that was the Smith of this period, and the kind of dialectal weapon he wielded.

## CHAPTER VIII

### FRONT BENCH FORM

**T**HERE can have been few politicians who in the course of three years in Parliament have reached such a position of influence and importance that Party leaders have taken them into their confidence. But it happened thus with Smith, and such a chapter is surely unique in the history of the Conservative Party. During the year 1909 Mr. Lloyd George had produced his famous Budget, than which no project could have more greatly angered the Lords and the landed proprietors. The Budget had a turbulent journey through the House of Commons, but the Liberals had there a majority more than adequate to secure its passage. Its fate in the House of Lords was a much more interesting matter. The Lords had openly threatened to reject the Budget. The threat was not taken very seriously until the measure actually reached the Upper House, when it became obvious that the great majority of the Conservative peers meant what they had said. In the circumstances there were conferences and negotiations among the principal Members of the Opposition in the House of Commons. Smith, from the first, made it plain that in his view the Lords ought to pass the Budget, and that if they did otherwise they would live to rue their action. As one who had done

an immense amount of platform work for the Party, and was therefore in close touch with views in the constituencies, he knew that the popularity of the Liberal Government had declined considerably. With this knowledge he favoured a course which would permit of the passing of the Budget and of correcting its worst features after the Conservative Party had been returned to power, which event, he felt, was certain to occur in the near future as the result of a continuance of the decline in popularity which he had noticed.

We know now that he was absolutely right, and that, on the other side of the House, the only thought that clouded Mr. Lloyd George's sanguine view of life was a fear that the Lords might relent and pass the Budget. Mr. Lloyd George knew that with such a cry as "the Lords or the People?" the Liberal Party would certainly come back again to power. Their return was less likely if this opportunity was refused to them and they passed out of office as the result of defeat on some measure on which little public feeling could be excited. Thus Mr. Lloyd George awaited the day when the Lords should reject the Budget and when he would be able to feel that Providence had delivered them into his hands.

In the result, what Smith feared and Mr. Lloyd George wanted, actually occurred. The Lords rejected the Budget with the somewhat hesitant approval of Mr. Balfour, who, according to Smith, had allowed his judgment to be swayed by Mr. Joseph Chamberlain, whose opinion "no longer retained its earlier value."



Smith had a very hard fight in his own division of Walton, his task being rendered the more difficult by his compliance with the earnest wish of the Party that he should use his powerful eloquence on behalf of candidates less gifted, or more strongly opposed, in other parts of the country. He contrived to do much speaking in Northern constituencies and also to retain his own seat.

Back in the House, Smith was now the star of a much larger party, the Liberals having lost more than half their majority. The Parliament of 1910, however, was not only short-lived, it was an exceedingly difficult Parliament for the leading personalities on both sides. It was but a few months old when the death of King Edward called a truce to Party conflict, and when the new King was able to apply himself to political affairs his first action was to call a conference of Party leaders, which lasted from June to November 1910. His Majesty was rightly anxious that the grave dispute which affected the constitution of the country should not increase in violence. He cherished the hope that it might be possible for the Party leaders to arrive at some measure of accommodation. At this juncture Smith contributed to *The Times* what was, for him, a very conciliatory letter, observing that the situation created by the conference could not appeal in vain to the chivalry of the Unionist Party, and urging both sides to exhibit the spirit of compromise. In the sequel, little came of the conference save an agreement that the Lords would pass the Finance Bill without further ado, thus making it unnecessary for the Prime Minister to ask the King

to create a sufficient number of peers of Liberal sympathies to ensure that result. Mr. Lloyd George, however, was determined that the Peers should pay a penalty for their temerity. Further, he had resolved that no future Liberal Government would find itself embarrassed by having measures, for which it conceived it had a mandate from the country at large, rejected by a legislative assembly which could not claim to be representative of the people. Thus another General Election became necessary to test the opinion of the country upon the question of reforming the House of Lords, and the Parliament of 1910 came to an end after a brief and inglorious existence of about eleven months.

Smith's most considerable contribution to its deliberations was a speech on votes for women. To this development he was always an emphatic opponent, and the ultimate success of the cause made no difference to his views. His speech of 1910, however, is notable for the prediction that once the fundamental distinction of sex was abandoned in this matter, the whole case of the opponents of women's suffrage was gone. It was idle for anyone to imagine that they could limit the concession to any particular class or that they could stop short of opening Parliament and the offices of State to women.

Smith foresaw what was not grasped by some politicians for nearly ten years.

Another and a later speech of his on the same topic contains a very reasonable argument leading up to a prediction which events have not justified. Speaking in the House, he said :

“Every Member has had experience in his constituency of women who would be ornaments to the electorate in any country, but it is the average case that one has to deal with in these matters. An honourable Member falls into the same error when he asks how the appointment of women on important Royal Commissions is justified if they are unfit to have the vote. The answer is the same. It is not the average women, but exceptional and highly-gifted women who are asked to sit on these Commissions. The question of the comparative intelligence of women and men which has been raised is one of the most irrelevant considerations ever obtruded upon this particular subject. Lord Robert Cecil has alluded with enthusiasm to the performances of Deborah, who, I suppose, may, without any undue straining of analogy, be considered the pioneer of the militant movement. What we are concerned with is not the comparison of the brain of a Sappho or the determination of Joan of Arc with the intelligence of the average agricultural labourer—but whether, on the whole question of even balance of men and women, you are going to strengthen the quality of the electorate or to weaken it. If there were no other objections, the fact that you are proposing to make an enormous infusion into the electorate and that the great majority of those whom you are proposing to add are entirely indifferent and will not use the vote, is fatal to the proposal of the Bill.”

Despite the short life of the 1910 Parliament, Smith contrived to advance his reputation considerably. To this fact the Liberal *Daily Chronicle* paid

testimony in the following note published in August 1910 :

“ Of the unofficial Conservatives, Mr. F. E. Smith is the man richest in promise. He has taken a great stride forward in the present session. No longer can we dismiss him lightly as a careless *gaillard*. He has expanded into a serious politician. There is still the old flash of liveliness in his speeches, but they have now thought and earnestness as well. The mandarins of Toryism have no liking for the Member for Walton, who has not even a nodding acquaintance with the great territorial interest which is so potent a factor in the councils of Toryism. But he has fought his way into the charmed circle, and cannot be ignored. If Toryism is ever again to be reconciled to the favour of the masses of the British people it will be through men like Mr. F. E. Smith.”

This view was supported by another writer whose political sympathies were not with Smith, namely, Dr. Arthur Lynch, M.P. Writing in the *Daily Despatch*, an organ of great influence throughout the North of England, Dr. Lynch said :

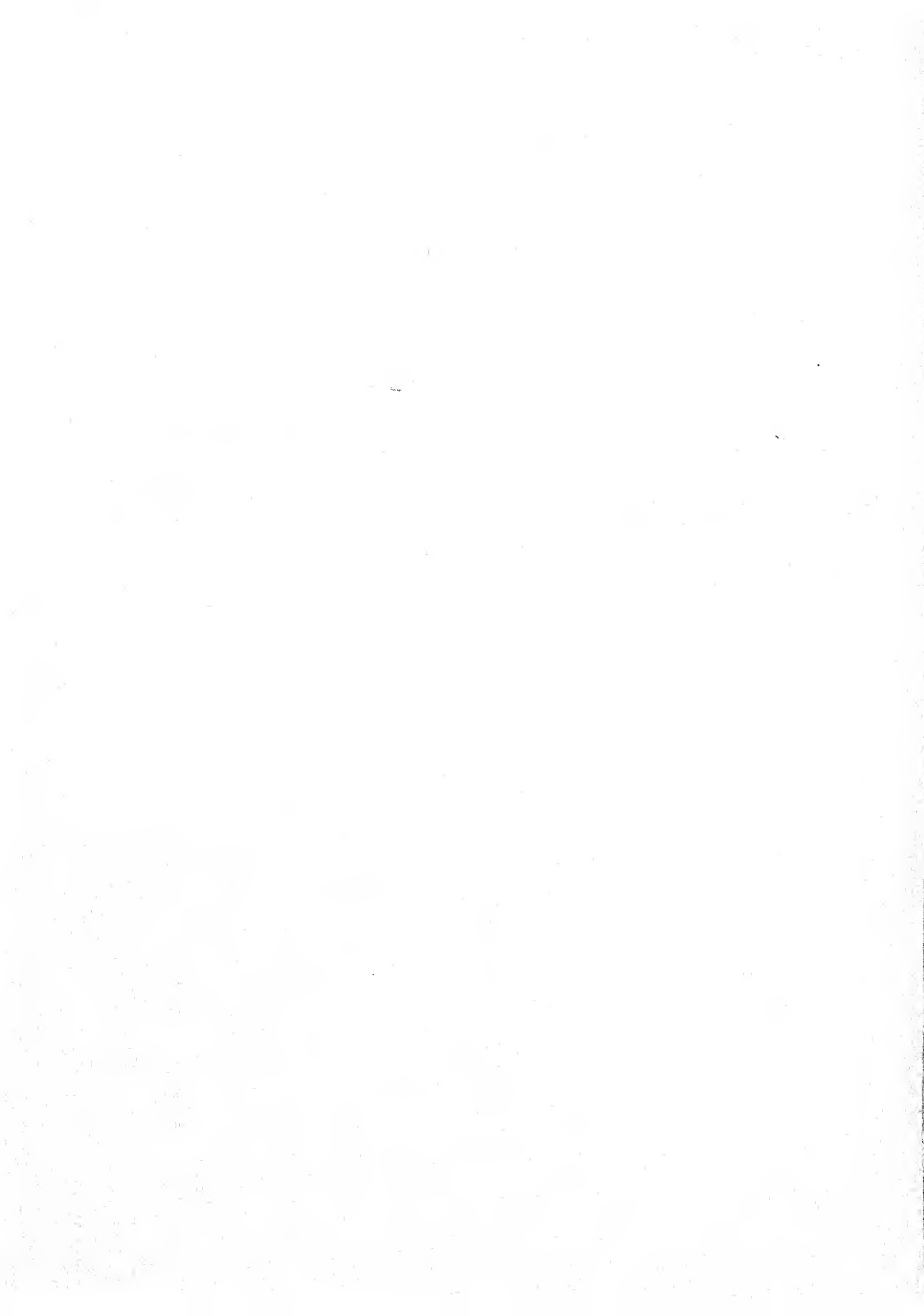
“ F. E. Smith is not the comet of a season. F. E. Smith will go far. Sincerely I hope he will go so far as to attain the Premiership before the bloom of youth and the spring of hope are gone, and especially before he reaches that period when men fancy they are growing wiser when they are only becoming gouty, and when ‘they reconsider their position,’ and eliminate all that demands fire, enthusiasm and faith.”

The Conservatives of Liverpool paid tribute to Smith's services to the Party in their own way. At



*F. A. Sventie*

— THE END —





a great gathering at St. George's Hall, Lord Derby, acting on behalf of Smith's admirers, presented him with an address, a silver rose bowl, two jugs and a dressing-case, "in recognition of his services to the Party throughout the county at the recent General Election." There were appropriate presents also for Mrs. Smith and for her young daughter, Miss Eleanor Smith. At this gathering Smith was able to claim with some pride that he had never sat on the fence in respect to any question of the day.

In reviewing the Press references to Smith about this time, reading the complimentary paragraphs and the character sketches and the eulogistic speeches, one has repeatedly to remind oneself that the subject of them had been a Member of the House of Commons for only four years, and that he was a man in the thirties. Still more surprising, he had never curried favour with anyone. As he observed at a later stage in his career: "I have not found the language of idle compliment a useful coinage, except in the company of very foolish men." Men might disagree and did disagree violently with him, and about him, but no man denied his ability and his courage, nor could anyone controvert his own boast at Liverpool that he had never been guilty of equivocation on any question of the day. What could be clearer evidence of this than this reply to Mr. Redmond, who, about this time, had returned from America with the funds of his Party generously reinforced by sympathisers in the United States. Said Smith: "We are met by the message of Mr. Redmond, full of American gold, 'I stand where Parnell stood.' If that is so," observed

the young Member for Walton, "we stand with the men who broke Parnell."

The Election of December 1910 made only a negligible change in the constitution of the parties in the House. In the course of the campaign Smith had made his usual contribution to the general attack in many constituencies and had retained his own seat by a comfortable majority. Soon after the House assembled, Smith remonstrated with the Government on the manner in which it had called a General Election.

"In the first place," he said, "the Government chose the time of the election to suit themselves. When they chose it, they knew perfectly well the date of the Coronation, they knew what was the necessary financial business which, owing to their own arbitrary conduct, had to be got through before the Coronation, and now they had chosen to take the Parliament Bill in the few months that intervened before the Coronation, the impossibility being obvious of waiting ten weeks in order to correct the accumulated anomalies of a thousand years. If the Government thought that, in those circumstances, the Opposition would be deterred from any defensive step that would otherwise be open to them, the progress of this debate and what would follow it, was likely to afford them a very considerable disillusionment. It was very much as if the Revolutionary Committee in France said to the victims of the guillotine: 'We beg of you to expire with tact, and even, if possible, with gaiety, in order not to cloud a day of national festival which happens to synchronise with your funeral.'"

This utterance gave the Government a foretaste of the truculence with which Smith defended the House of Lords against those who would turn it into an innocuous debating society. Though for the moment the Parliament Bill dominated the programme, many other important issues were before the country. There was the National Health Insurance Bill to which the Government was committed ; there was the long promised Home Rule Bill, and, as though these were not sufficient, Mr. Lloyd George was talking of a large measure of reform in the Land Acts. Steadily becoming more menacing was the question of Women's Suffrage. In the background always was the question of Naval Policy, and there were considerable problems connected with the Territorial Army and with the reorganisation of the regular Army that were liable always to produce small crises, for there was a growing body of opinion in Great Britain that regarded a Continental war as a very near and a very real possibility.

For a time, however, political contention was stilled by the Coronation of King George. As is usual on such occasions, the event was marked by the issue of a special Honours List, and Smith was included, having a Privy Councillorship conferred upon him at the early age of thirty-nine. The leader of the Party had sought further to honour him by inviting him to sit upon the front Opposition Bench. This invitation, however, Smith felt obliged to decline, but it was tendered again later and then found acceptance.

Great opportunities were presenting themselves to the Opposition, but, for a time, the Conservatives

weakened their effectiveness by an internal dispute on the subject of leadership. To quote Smith's own account of the trouble: "The Die-hards having compelled Mr. Balfour to throw out the Budget, characteristically began to place upon his shoulders the blame for the consequences. 'B. M. G.' (Balfour must go) became the motto of these loyal men."

Wounded by the ingratitude of some members of his Party, and perturbed by the agitations against him that were proceeding outside the House, Mr. Balfour divested himself of leadership, announcing his resignation to the Conservative Association of the City of London, his constituency, in a speech that was a model of restraint and self-forgetfulness in circumstances of considerable provocation. What then happened is described by Smith in the report of a speech which he made to a North-country audience.

"It speaks well for the versatility of the Party," he said, "that there were at least four leaders of the first rank, any of whom would adequately, and even brilliantly, discharge the duties of leader on the floor of the House of Commons. We had our friend Sir Edward Carson, who stated from the outset that his first obligations were to his fellow-countrymen in Ulster in this great struggle, and that the duty he owed to them forbade him to take the lead of the army as a whole. There were two other men of the greatest distinction, who had done great service in the past, Mr. Walter Long and Mr. Austen Chamberlain. Mr. Walter Long has served the Party with fidelity, with courage and with distinction for more years than I should in a moment care to count. He is a

man under whose lead any party might have been proud to march, as I believe, to victory. There was also Mr. Austen Chamberlain who had held the great office of Chancellor of the Exchequer and whose masterly conduct of the opposition to the Budget is fresh within the memory of all of us.

“Happy is the party which has three men of so much distinction able to fill the high position which was vacant. Happier still is the party which has two men of such enlightened patriotism and disinterested unselfishness as has been shown by Mr. Long and Mr. Chamberlain when they said that, ‘inasmuch as the forces which are respectively supporting our candidatures are divided, and inasmuch as in our judgment it would be a misfortune, and might possibly impair the unity of the Conservative Party, if there was to be a divided vote at a party meeting, both us will stand aside in favour of a gentleman known to you, Mr. Bonar Law.’

“I know Mr. Bonar Law and I am entitled to speak of him as my friend. I know, and you know, his great powers of speech, his courage, his lucidity, his knowledge of business, his knowledge of politics, and that transparent simplicity and honesty of character which has endeared him to you and me, and which, I believe, will rapidly command the confidence of the Party in the country. I say that under his leadership in the House of Commons, I have no fear of the future. Great causes transcend and survive great personalities, and infinite as is the loss which we have sustained, I believe we are marching on now to the success which has been too long delayed.”



Because he saw in the near distance a prospect of victory for his party, Smith appears to have considered that the time had arrived when he might speak his mind concerning a constructive, democratic programme for the Conservatives. Local report has it that, in his first political campaign, Smith, never hampered by any excessive regard for modesty, compared himself to Disraeli. The idea of a Conservative democracy had always been one that he cherished. Though not himself of the humblest class of the community he had spent the early part of his life in close contact with it. Further, many of earlier experiences of public speaking were acquired in the working-men's Conservative Clubs in Liverpool. Two observers of his career, very different in type, namely, Mr. Garvin and Lord Beaverbrook, professed to see in Smith a Radical strain. Smith's biographer, "Ephesian," denies this rather warmly, but here and there throughout his speeches are phrases that might be summoned as evidence in support of this theory. Indeed, it is very difficult to believe that a man of Smith's antecedents and sense of values could be without such a tendency. There is a reflection of it in the following extract from an article which he contributed to the *Oxford and Cambridge Review* in 1911 :

"There are still to be found in happy England the most revolting slums in Christendom, and hundreds and thousands of our fellow-subjects live under conditions which render civilisation a mockery and morality a name. At the present moment the most clamant national requirement is undoubtedly a



national measure—the crisis has long since exceeded the admirable efforts of the municipalities—in the direction of eradicating dwellings which are grossly unfit for human habitation.

“A melancholy feature of modern degeneracy is the indifference which many unhappy Englishmen exhibit to considerations of patriotism. No political truth is at once more poignant and more profound than this; that you have no right to expect patriotism towards a country which fails to provide industrious citizens with the means of a decent and tolerable subsistence. Let England afford to Englishmen who are prepared to work a fair share of the humble amenities of life, and the heart of England will be proved in the supreme moment of trial to be as true as that of Canada; but let the proletariat be once convinced that the Unionist Party is the Party of the classes and the mouthpiece of privilege, and it will undoubtedly spue them forth from their mouths. And it will be right to do so.”

To-day, nine out of ten Conservatives would endorse those sentiments, and I fancy the same proportion would agree that in 1911 those views were by no means orthodox Toryism.

The same theme recurs in a series of articles which he wrote for the *Standard* some time later. In one of these he said: “The chief duty of the Unionist Party is to carry on the work of housing reform in the firm belief that the democracy will realise the earnestness of their intentions and that an imperial nation cannot be erected on the basis of an ill-housed and slum-bred population. Our predecessors in the

leadership of the Party have already pointed out to us the way, and it only remains for their successors to complete the work of the past by adapting it to the needs of the present."

In another article of the same series on social legislation, he observed :

" From 1853 to 1890, with the single exception of a useful Amending Act of 1882, every single Act of the slightest importance was due to the efforts of Lord Beaconsfield and Lord Salisbury. The reform of the housing conditions of the people was, in fact, the main contribution of the Conservative Party to social legislation during the latter half of the nineteenth century, even more than the Factory Acts were its tribute to social amelioration during the preceding fifty years."

The enunciation of such a policy could not fail to add to his popularity with those enormous audiences which he was accustomed to address almost every week in various parts of the country. The window of almost every stationer's shop proclaimed his popularity, for picture postcards of him appeared alongside those of reigning beauties of light opera. As one commentator of this period put it : " When Mr. Smith is billed to address a meeting, he can fill the hall as quickly as Harry Lauder." Further, despite his opposition to votes for women, his popularity among the unfranchised section of the community was greater than it was among the men. One evening, in proposing his health, Sir Herbert Tree referred to this phenomenon, saying : " He for whom the women of England are knitting slippers, has delivered in the

House of Commons what is probably the most eloquent plea ever made for the political supremacy of man."

Such popularity did not fail to stir the usual undercurrent of jealousy within his own Party. Some of the Druids of the Opposition benches were incapable of understanding his success. Some of the county folk sniffed a little at his ancestry. They said, too, that his language was too much like that of Mr. Lloyd George, though, in point of fact, Smith's descriptions of Mr. Lloyd George were more biting than any words of Mr. Lloyd George. Smith, however, paid no heed to such people. "Middle-aged dullards," he called these types. He was well aware that the future of the Party was in the hands of the men who could make the Conservative programme interesting and attractive to the vast mass of people in the industrial districts. He could do that, whereas some of his critics would hardly get a hearing in any audience that did not consist largely of their own tenants or of others who were obliged by material considerations to adopt an attitude of respectful attention.

Another result of Smith's popularity and of his democratic programme, was the suggestion that he was gravitating towards Liberalism. Said the *Liverpool Post* on an earlier occasion: "It is charitable to suppose that the rumour that credits him with the intention of following in the footsteps of his friend, Mr. Winston Churchill, is not altogether unfounded." Some perceived confirmation of this notion in the fact that Smith was a sponsor at the

christening of Mr. Churchill's son; others agreed with the jest of the *Daily Citizen*: "His position between the two parties is indeed very like the parting in his hair—it is so exactly down the middle that in case of emergency it might be turned to either side." It is amusing to note, however, in the interest of veracity, that this symbolic parting, as shown by a series of photographs taken over a long period of his life, was never exactly down the centre, but began slightly to the right, and moved appreciably in that direction as he advanced in age.

Any suggestion of his joining the Liberal Party was completely dissipated when Smith threw in his lot wholeheartedly with the cause of Ulster. From his earliest days in the House, Smith had been friendly with Sir Edward Carson. The friendship ripened so pleasantly that in 1909 Smith dedicated a collection of his speeches then published in book form: "To my friend, Sir Edward Carson." But apart from this consideration, Smith had always held decided views upon the Irish question, for Smith was of Liverpool and Liverpool was a microcosm of Ireland.

Few Conservatives showed greater courage in dealing with the Home Rule question both in the House of Commons and in the country. There were many constituencies in the industrial areas which possessed a strong Irish population, and where a word hostile to the cause of Home Rule was certain to raise a storm of trouble at any meeting, tickets and similar devices being of little use against Irish resourcefulness. Smith, however, never trimmed his sails to meet such contingencies. He expressed his views on

Home Rule fearlessly ; so much so that it was once recorded of him : " If there is any accusing word which he has not yet addressed to Mr. Redmond, nobody else has been able to think of it."

Consequently, when he was introduced to audiences in Ulster, he was already well known and he was hailed as a worthy second to Sir Edward Carson. When the men of the North began to organise and arm themselves against the possibility of coercion, Smith joined the Ulster Volunteers and appears to have been appointed to a position comparable to that of Chief of Staff to Sir Edward Carson. His post, however, carried no such glamorous title. Someone said he was a " galloper." The term stuck and was used to taunt him. He was wont to say, however, that he was proud of the title, but when he became Lord Chancellor his pride in it was not very obvious. On one occasion I heard the late Israel Zangwill employ it in the course of proposing the toast of the Lord Chancellor at a dinner. Summing up Smith's career, he said lightly : " Was there ever such a gallop, or such a galloper ? " It was very noticeable that, in replying, Smith failed to thank the proposer of the toast and made no reference to him or to his observations. Between the years 1912 and 1914, the adventurous heart of Smith warmed to the Ulster enterprise. He loved the fervour of his audiences in Northern Ireland, and the man who had climbed over roofs at Oxford, who had earned the title " Don't-care Smith," who had cheeked his schoolmasters and had rebuked county court judges, was attracted by the prospect of recourse to arms. After

all, it was to be a perfectly respectable revolt. These men were not fighting for secession, they were not taking arms against their King; they were fighting to remain under his rule and to continue within the British Empire.

Smith was born on the Orangemen's festival, the 12th of July, the anniversary of the Battle of the Boyne. Consequently, when his birthday in 1912 found him in Belfast, those who knew him recognised that this was an occasion to which he would rise with more than usual enthusiasm. Those who participated in the demonstration at Belfast numbered one hundred and twenty thousand. They marched out to White Abbey in a procession, punctuated by one hundred and twenty bands, and decorated by more than three hundred banners. That this should occur despite an incessant downpour of rain is a tribute to the earnestness and enthusiasm of the Covenanters. From a platform on which all the Dominions and some of the Colonies were represented by Ulstermen who had emigrated, Smith delivered a speech that roused the whole of the vast audience. As one man they rose to him when he declared: "The present crisis has called into existence one of those supreme issues of conscience amid which the ordinary landmarks of permissible resistance to technical law are submerged."

As an example of the speeches with which he regaled Ulstermen at this stage of the controversy, the following extract from a Belfast oration is typical:

"For how long have you fed the dreams of the patriotism of your youth out of that deep well which inspired the Battle of the Boyne? For more than



two hundred years you have refreshed your own courage, and you have educated and inspired your children in the memories of that battle. But you cannot live for ever, however glorious they may be, on the memories of your ancestors. It is time for you—listen to me—to make history for yourselves, to hand down to those coming after you, and I am satisfied that with a deep sense of individual responsibility every man and woman will sign that covenant on Ulster Day. I make this final prediction to you that in days to come, when you and I may be gathered to our fathers, many a child in Ulster enjoying the fruits of your labours—it may be the result of your devotion in cherishing the precious heritage of full civic and religious freedom—will say: ‘My ancestors won them for me long ago at the Battle of the Boyne, and in a more recent day by those who rallied around Carson and signed the Solemn League and Covenant of 1912.’ ”

Yet another notable example of his Ulster utterances is contained in a speech which he delivered at Portadown in September 1912. Here he said:

“ I do not conceal my view that the battle is already won. Nothing can bear down Ulster but force—not the force applied by your enemies in Ireland—(laughter)—but force of quite a different kind. Irish Nationalist Members and their followers are in this position to-day: they could not themselves (and dare not try to) conquer Ulster for themselves, and therefore they are turning round to the English Army with this message: ‘For years we have reviled and insulted you. For years we have spat on your flag,

and we have rejoiced when you were shot down on the fields of battle, but come now and fight for us.' I place on record my view, that this Government, even if it had the wickedness—which I have difficulty in believing—is wholly lacking in the nerve to give an order to the British Army to use coercion in Ulster. Supposing the Government gave such an order, the consequences can only be described in the words of Mr. Bonar Law when he said that if they did so, 'it would not be a matter of argument, but the population of London would lynch you on the lamp posts.'" (Great cheering.)

Nor was his service to Ulster confined to words, for a few days after his Portadown speech he was telling a Liverpool audience that he had obtained from Liverpool shipowners promises of free ships to convey ten thousand men to Belfast in the event of trouble. He added: "We don't care what the consequences may be."

The immediate consequences were, of course, reciprocal threats from the rest of Ireland, and in England an outcry against the impropriety of a Privy Councillor indulging in such language. There were, indeed, calls for the arrest of Sir Edward Carson and himself, but it was Smith's view that whatever happened, the Liberal Government had neither sufficient courage nor sufficient folly to move them to such a decision.

The day was to come, however, when Smith was to talk in more conciliatory terms, and in 1914 he made a statesmanlike speech in the House of Commons, which well merits quotation.

“ I add with the greatest sincerity that while I have put forward the event to which we on this side of the House attach great significance, I do believe that the time has come when men of all parties in this House would be well-advised to consider, not where one party is drifting, but where we are all drifting. We shall not arrive at a conclusion upon this point by long historical arguments and recriminations. Nobody will ever persuade us on this side of the House that we have not been justified in the things we have done. (I admit they were very difficult to justify.) No one will ever persuade honourable gentlemen opposite that they, on their part, were not justified in what they have done. These events will be decided by the historian, and he will care little to hear us proclaiming with a loud and obsolete voice that the beginning and end of all these difficulties in which we are involved has been your subjugation to the Irish Nationalist Party. He will care less to hear you say that the principal responsibility rests upon the shoulders of those who have inculcated and preached the doctrine of insurrection. What he will say is this: ‘ The whole House of Commons, all of you, ought to have been concerned, not for any party, but for the nation as a whole. You inherited from the past a great and splendid possession, and where is it now ? ’ I can only say, as far as I am concerned, and I believe as far as many who sit on this side of the House are concerned, that late as is the period at which this controversy has now arrived, I believe many of us are willing that it should be conducted in those later stages with an anxious desire to

see, even while the water runs under the bridges, whether nothing can be done by the House of Commons to retain some memory of the patriotism and the traditions of the past."

Though it did not come in the way Smith indicated, and though the situation drifted perilously near to disaster, a truce to this political conflict was not far off. The greater crisis of August 1914 arose, and representatives of both elements in Ireland agreed to defer the whole question until a more convenient season. But Mr. Redmond, though he did not know it, had ceased to represent the effective majority in Southern Ireland, and before the Great War ended there must have been many of both parties in the House of Commons who wished devoutly that, at some earlier date, a broad view of the Irish problem had been taken, and had been acted upon. Thus might have been obviated a multitude of embarrassments and difficulties which were imposed upon the Empire while it was in the throes of a death struggle, supplying certain elements of the population in Ireland with a new reserve of evil memories upon which to brood and with which to retard the development of an enlightened spirit of co-operation.

## CHAPTER IX

### THE WAR

**I**N 1919, in a eulogy of the newly appointed Lord Chancellor, Master Sir Miles Mattinson, K.C., was tempted to project himself into the future and to overhear a Lord Chancellor of another day describing the career of Lord Birkenhead. He mused : "I can imagine your successor, possibly with an added note of pride in his voice, saying, 'When the testing time of the Great War came, this young man, then almost at the head of the Bar of England, making a princely income, cast £20,000 a year to the winds and himself went to the war. Called home for public duties, he entered upon the office of Attorney-General, filling it with eminent distinction and public advantage at the time when that office made more imperious demands upon the highest powers of mind and judgment of its holder than at any other period.' "

A future Lord Chancellor may be able to say this, and more, of Lord Birkenhead; but it must be admitted that, on the evidence at present available, it is difficult to go quite as far as the learned Master went on that occasion.

To begin a little prior to August 4th, 1914, in those anxious days immediately preceding the war, Smith was able to render notable service as a means of communication between the Government and his own

Party. His intimate friendship with Mr. Winston Churchill, then First Lord of the Admiralty, and his association with the Conservative leader, Mr. Bonar Law, put him in an ideal position to facilitate negotiations. Smith the intermediary showed himself to be a very different person from Smith the Ulster Galloper. He was far-seeing, judicial and effective. As the critical day drew nearer the two great Parties were able, thanks in no small measure to Smith's diplomacy, to show Germany that it was idle to count upon party strife to weaken and embarrass the British Government when the fateful decision had to be taken.

Smith had for some years shared the views so courageously and indefatigably disseminated by Lord Roberts concerning the duty of Great Britain to take adequate precautions against a European war. Smith himself became a citizen-soldier about 1908, receiving a commission in the Oxfordshire Hussars, in which unit Mr. Churchill was already an officer. Despite the claims of politics and the law, Smith contrived to find time for a certain amount of training and for attendance at the annual camp.

In these circumstances there could be no special virtue in his casting a princely income to the winds and going to the war. He was an officer in the Territorial Force, embodied for active service, with a duty explicitly laid upon him to comply with such orders as were issued to the Territorial Force. True, he was 42 years of age ; but his physical fitness almost flatly contradicted the record of time.

On August 8th, however, he was summoned to



Whitehall and asked by Lord Kitchener to take charge of the Official Press Bureau. This office had just been created to reconcile the necessities of the military situation and the functions of the Press. The Admiralty and the War Office were the parents of the project, and Mr. Churchill, as First Lord, was presumably the nominator of Smith for the office of Chief Censor. Lord Kitchener acquiesced.

For nearly three years Smith had sat upon the Opposition Front Bench and was, therefore, destined for an important office when the Conservatives should come into power again. In the normal course of events he would have succeeded to a post much more glamorous if not more responsible than this war-time improvisation, and he would have begun his administrative career with a highly expert staff to assist him and to protect him from the errors of inexperience. When office came, however, he was cast into a commandeered building and told not only to administer a department which everyone knew would be unpopular, but actually to create it with the aid of a few regulations and a staff as new to the work as he was himself. In the organisation of the administrative side he received invaluable help from his brother, Mr. (later Sir Harold) Smith.

One American commentator, when Smith left the Press Bureau in 1914, pronounced his administration a failure. I do not think such a verdict would be confirmed to-day by any responsible person in Fleet Street, or in that equally important sphere of journalism, the Provincial Press. The Bureau was disliked by the Press; its blunders were many and appeared

incredibly stupid in some instances. But those who know anything of the Press, and who combine with that knowledge a recollection of the condition of affairs prevailing in Whitehall and at the Front, are less likely to criticise than to marvel at what was accomplished.

The Press was avid for news. After all, this was no private foray. Every family in the country was affected, and was more and more deeply affected as the months went by. They looked to the Press to keep them informed. Reticence was regarded with the utmost suspicion: it was interpreted as meaning blunder or disaster. The public were not disciplined in this matter and did not intend to be. They wanted news, and the first duty of the Press was to furnish it. The newspapers, thanks to the courage and resource of their staffs, were collecting news; but the Government, through the Press Bureau, forbade them to print most of it.

The Military Authorities regarded this craving for information as just an impertinent curiosity on the part of the Press. The public, they believed, had the most perfect confidence in the admirals and generals, and deplored this agitation for more news.

A year after the outbreak of hostilities, Sir Douglas Haig was saying to a band of war correspondents impatient of heavy-handed censorship: "I think I understand. . . . You want to get hold of little stories of heroism and so forth and to write them up in a bright way to make good reading for Mary Ann in the kitchen and the man in the street."<sup>1</sup> As that

<sup>1</sup> *Realities of War*, by Sir Philip Gibbs.

attitude of mind represented a year's progress on the official policy of August 1914, it can be readily imagined that the person who stood between the fighting services and the Press in the early days of the war occupied a distinctly unenviable position.

Soon after appointment to a responsible place in the war machine, Smith was putting pen to paper.

Possibly it was Lord Kitchener's anxiety about the erratic flow of recruits that caused Smith to write what to-day strikes one as a badly-conceived article on recruiting. It appeared as a foreword to a pamphlet by Sir Arthur Conan Doyle, entitled *To Arms!*—the contribution being dated "Charlton, Banbury, August 1914."

Lord Kitchener had called for 500,000 men. Why they did not respond immediately they were called seemed as obvious then as it is now. Certainly it was not because they were unwilling: they stepped forward readily enough later. Evidently they did not appreciate the gravity of the position.

As Smith well knew, responsible statesmen and newspapers had been for years making light of the peril of war, and smaller politicians had openly derided those who were endeavouring to prepare the country for it. They worked great mischief. But Smith seems to have ignored or to have forgotten that aspect of the matter, and to have written a scolding which could not have helped very greatly the object in view.

Those (said Smith in this pamphlet) who thought his appeal was unnecessary were wrong. "They have only to walk in Hyde Park, the Mall, or any

other place of resort, on any night, especially on a Sunday, and they will see thousands and thousands of able-bodied, unattached young men, nearly all of them with girls of their own age, waiting, I suppose, till the horrors that have been, and are being, perpetrated in Belgium and France are repeated in England. That is in London. What of the great Northern, Midland and Western cities which send tens of thousands to cheer their representatives on a football field, but are unmoved by the terrible experiences of our men on the field of battle ? ”

Finally he exclaimed : “ Let fathers and mothers send their sons, let girls send lovers and brothers. We must fight now to the last gasp that such things may never occur again.”

A little less severity in the handling of the news by the Press Bureau would perhaps have made his appeal unnecessary. Later the Bureau did become less exacting.

Just how close was the control of Lord Kitchener over the news of the fighting may be gathered from the following extract from Lord Birkenhead’s *Points of View* :

“ He (Lord Kitchener) sent for me as soon as the first official account of the battle of the Marne arrived. I made a draft in his presence for publication. He substituted for the more cautious expression I had used, the words ‘ the routed enemy.’ I said, ‘ Is that quite safe ? ’ He replied, ‘ Quite. They are routed in what I think will be the decisive battle of the war.’ The intuitive quickness and confidence of this judgment made a profound impression upon me at

the time, which was further deepened by the confirmation which events supplied."

During his service as War Minister, Lord Kitchener had no collaborator more faithful than Smith, and after his death none was more loyal to his memory. Smith rose in his defence on many occasions. He stoutly resisted the imputation that Lord Kitchener had grown old, and was no longer the Kitchener who had served the country with such conspicuous success in so many parts of the world.

In the first few weeks of the war Smith was seeing Lord Kitchener almost every day and, therefore, had unusual opportunities of forming an opinion of his qualities. It is possible that Smith's championing of the "weary Titan" may have been due to that chivalry which he showed on more than one occasion when great men—Haldane and Asquith among them—were attacked by people whom Smith regarded as being either spiteful or lacking the intellectual qualities necessary to fair judgment. At all events, it becomes plain when one studies Smith's writings about military men and stories of his dealings with them, that the military mind did not attract him. It is doubtful whether he understood its workings, or was willing even to take the trouble to try to understand it. He seems to have been a little contemptuous of it. Kitchener provided the exception. During these days of consultation on Press business Smith came not only to admire him, but to understand his processes of thought. Hence it happened that later, when Smith became Attorney-General and had a seat in the Cabinet, he was able to come to the aid of

Lord Kitchener during discussions, using his remarkable gifts of exposition on behalf of the War Minister, who, like so many great soldiers, had difficulty in expressing his ideas to the satisfaction of civilians. Very evidently among the compliments which Smith valued most highly was Lord Kitchener's observation, recorded by Sir George Arthur, to the effect that Smith had been a comfort to him in the Cabinet.

Smith's character never exhibited itself to better effect than when his "side" or one of his friends was in adversity. Lord Kitchener's compliment has the same ring as Mr. Baldwin's phrase, employed in the letter accepting Lord Birkenhead's resignation from the Government in 1928, "In dark days you were a tower of strength."

To a man of Smith's temperament the task of supervising the Press Bureau with its attendant team of newspaper representatives, some of whom were almost his match in the matter of truculence, could not satisfy for long. It was as much his own wish as Lord Kitchener's that he should be given other duties.

Thus a day came, late in September 1914, when he donned the uniform of a major of Yeomanry and set out for France, having sent a letter to the chairman of the Conservative organisation in his constituency in the following terms: "As you know, I am offered the opportunity of going to the Front, and I shall have left England by the time you receive this letter. I cannot go without conveying, through you, to all constituents, irrespective of party, the 'good-bye' which circumstances have rendered impossible for me



to bid them in person. No Member of Parliament was ever treated with greater kindness and indulgence than I have been by the electors of Walton, and I beg of you to bid all my friends in Walton an affectionate farewell, until, as I hope, in happier days, when the quarrel has been carried to the only issue which the honour and safety of Britain can recognise."

The opportunity to which Smith refers was a Staff appointment as Observer with the Indian Corps, then newly arrived in France. In an official historical work, *With the Indian Corps in France*, in the compilation of which Smith collaborated with Lieut.-Colonel J. W. B. Merewether, C.I.E., we are told that in appointing Smith, Lord Kitchener "had in mind the extreme importance, first of preserving a permanent historical record of the services of the Indian troops, and secondly of supplying a contemporary record in India of the fortunes of the corps with the object of stimulating recruiting."

There is abundant evidence in the narrative of the corps that Smith was no indoor observer, content to write his story on second-hand information. He was often in the trenches, and sometimes in equally unpleasant places where he had no business. But he found irksome the restrictions of censorship, and experienced some of that stupid use of the blue pencil which editors alleged against the Press Bureau when it was under his direction. Although the narrative of the Indian Corps is a work of joint authorship, one detects the hand of Smith in the passage that reads: "Those who in France were responsible for the censorship of news from the seat of war on the

Western Front . . . refused to allow a single battalion to be mentioned by name for fear of giving information to the enemy of the *ordre de bataille* at a moment when every single battalion in the Corps had lost prisoners to the enemy." He records tartly that this condition of affairs was altered later. We need not inquire for the identity of the person who saw that it was altered.

General Sir James Willcocks has made it clear that Smith not only discharged his duties satisfactorily, but showed courage and sang-froid under fire. The General further expresses the view that Smith would have attained high rank had he taken up a military career. On this point it is difficult to avoid the reflection that if this were so, the time was remarkably opportune for the temporary assumption of such a career. But Smith did not continue in the field after May 1915, which fact lends support to Lord Beaverbrook's assertion<sup>1</sup> that his position was anomalous and that he was not favourably regarded by the High Command. Smith's service with the Indian Corps had earned him not only a mention in dispatches but a promotion to the temporary rank of Lieutenant-Colonel. His substantive rank was arrived at by subtracting the word "Colonel." He was merely a lieutenant of Yeomanry with rather less than the average Territorial subaltern's experience, for he had been extremely busy as a civilian and could not be classed with those who had soldiering as a hobby to which they could devote ample leisure.

Except by reversion to his substantive rank,

<sup>1</sup> *Politicians and the War*, by Lord Beaverbrook.

regimental employment in France could not be found for him except as the result of privileged treatment. That he might not have declined, but it was not likely that such treatment would be willingly accorded by the High Command, with whom he was not popular. For such antipathy to Smith as existed at General Headquarters, Lord Beaverbrook assigns some interesting reasons. He says that Smith "was inclined to talk at St. Omer as if he were at the Carlton Club."

At the Carlton, of course, Smith was a lion. At G.H.Q. he might well have been classified by some of the senior generals as a "puppy," or at best as a "damned politician." In such company, however, according to Lord Beaverbrook, Smith chose to exercise his "biting and witty tongue . . . and G.H.Q. in France was about the worst place in the world in which to employ this particular instrument."

Further, on the same authority, we learn that there had been a "breeze" with Sir John French over an application by General Seely for permission for Smith and himself to visit the King of the Belgians. General Seely's explanation, when sought, was that they wished to deliver a private message from Lord Kitchener to the King. Not unnaturally, Sir John as the Commander-in-Chief, and the proper channel for all communications from home, resented this apparent interference with his functions, and "the backwash of his annoyance was vented on Lord Birkenhead, who in reality had very little to do with the matter."

At the time, Smith, no doubt, endured this "back-

wash " with the submissiveness proper in a Lieutenant (temporary Lieut.-Colonel) when rebuked by a Field Marshal Commander-in-Chief. But the relationship of the two men did not always remain thus, and there came a day when Smith was able to write of the War not only with propriety but with the authority of an ex-Cabinet Minister, and he found it necessary to tell the then Earl of Ypres that his conduct in the notorious controversy about shells had been "repulsive and unsoldierly."

It seems proper to dwell upon these matters for they may have a bearing on Smith's decision to accept office in the first Coalition, and to abandon his military career at a time when men older than himself felt it an urgent duty to play a soldier's part. For that decision Smith was not spared criticism. If that criticism be just, the force of it is to some degree mitigated by the consideration that he had reason to suppose that, if he elected to continue as a soldier, the chance of his gifts being put to their maximum usefulness was very small, and that, despite the need of officers in the field, he might yet be able to render more useful service at home than in France.

At all events, Lieut.-Colonel F. E. Smith did not repeat in the profession of arms the startling success that he achieved in law and politics. But possibly the soldiers were to blame for that. Perhaps they had made up their minds that he should not. A man might crash his way to eminence in the Temple and in the Palace of Westminster, but as senior soldiers were fond of saying to civilians, "that's not the way we do things in the Army."

So Smith relinquished active service in May 1915, after an experience that must have given him much food for reflection. There were phases of it which he never forgot, and twelve years later he stood before the memorial to the Indian troops, erected on a crossing which must have been very familiar to him in the days when he picked his way among the tragic traffic of the battle of Neuve Chapelle. Here, in the course of one of his most eloquent addresses, he said of those Indian soldiers among whom his lot had been cast: "I saw them—I can see them now—shivering in those early and primitive trenches, standing up to their knees in foul water, their features composed in that mask of fatalism which gave an impression of pathos altogether terrible. Their bodies were often broken by the elements, but their souls were never conquered. They did not taste of death but once."

Smith was then Lord Birkenhead and Secretary of State for India, but when he last saw the Indian Corps he was leaving for England, for his first Ministerial office.

## CHAPTER X

### BACK TO BRIEFS

SMITH'S return to England and to office under a Liberal Prime Minister excited little comment. The nation was too much concerned with the formation of the Coalition Ministry and with those troubles at the War Office and the Admiralty that had led to its creation. Incidentally it is interesting to note that in the re-shuffling of offices, Smith's Wadham friend, Sir John Simon, was offered, and declined, the exalted position of Lord Chancellor of England.

In the general discussion of the changes there was quite evidently a current of opinion which did not approve of Smith's appointment, for that vigilant and courageous periodical *Truth* published the following comment :

"One cannot help remarking on the decision of Major F. E. Smith to lay down his sword at this juncture. We hear now much of the duty of every civilian of military age to become a soldier : no duty even to wife or children, no thought of business influence or future advances is to stand between him and the call of King and Country. Yet here we have a civilian already a soldier and holding the King's Commission, who is willing to become a mere lawyer at £6,000 a year, when dozens of elderly K.C.'s, some of them verging on destitution, could easily be found



to do the job equally well. It does not seem a very good example to the three hundred thousand young men whom Lord Kitchener is waiting for."

Whether the business then occupying the attention of the Law Officers could have been handled effectively by the "elderly K.C.'s" to whom *Truth* referred is, perhaps, a little doubtful. In those days the legal advisers to the Crown were much occupied with very delicate work originating in the Admiralty and the Foreign Office, and necessitating a firm grasp of international law, a branch of jurisprudence of which Smith had already exhibited unusual knowledge. The issues bound up with the seizure of ships were full of possibilities of international misunderstanding, and it was decidedly in the interest of Great Britain to avoid the smallest addition to the crop of problems arising out of the naval blockade by actions based upon imperfect understanding or faulty interpretation of the law governing these highly important matters. Of the difficulties involved we are afforded a glimpse in *The Life and Letters of Walter Hines Page*, where the irritation caused to neutral nations by British interference with the world's seaborne commerce is made painfully plain.

The most interesting case which came into Smith's hands during his brief tenure of office as Solicitor-General was concerned, not with a neutral vessel, but with a steamer that professed to be a German hospital ship, named the *Ophelia*. The papers came before him immediately he assumed office, and he had to argue the case before the Prize Court almost at once. Thus Smith turned very quickly from the Army to

the Law, and from land warfare to naval operations. The *Ophelia*, sailing under the protection of the Red Cross, was, although employed by an enemy country, according to the terms of the Hague Convention, immune from capture, provided that she was built or adapted wholly and exclusively for aiding the wounded, sick and shipwrecked. It was, of course, a provision of the Hague Convention that such ships must not be used to commit acts harmful to the opposing belligerent power.

The *Ophelia* was twice noted in suspicious circumstances by British patrol boats. On the second occasion she was escorted to Yarmouth. There the vessel was examined and found to be quite unsuitable for a hospital ship, but to have an unusual and, for a hospital ship, unnecessary amount of wireless and signalling equipment.

She was taken in October 1914, and the case came before the Prize Court in May 1915. To obtain a decision from the Court that the *Ophelia* had been lawfully seized it was necessary to establish that she had forfeited the protection conferred upon hospital ships by the Hague Convention, and so a judicial investigation by the Prize Court was essential. The captain laid claim on behalf of the German Government, and appeared before the Court, a very unusual proceeding. Smith argued that there was a finding of fact against the appellant, and that he could only succeed in his claim that the ship was captured unlawfully if he showed that there was no evidence to support this finding of fact—in other words, the German Government must prove that black was white.

The Court, which consisted of the President, Sir Samuel Evans, sitting without a jury, rejected this argument. But Smith had also submitted that the case was conclusive, apart from the finding of fact against the German captain. This argument was accepted by the Court, and Sir Samuel Evans unhesitatingly found that the *Ophelia* was not adapted and used for the special and sole purpose of affording aid and relief to the wounded, sick and shipwrecked, and that she was adapted and used as a signalling ship for enemy naval purposes. Each finding deprived her of the protection of the Hague Convention, and the captain had been guilty, as Smith pointed out, of the serious offence of destroying her papers.

Smith served for only six months as Solicitor-General. Sir Edward Carson, the Attorney-General, was not happy about the war policy of the Cabinet, and in November 1915 he ended his association with the first Coalition. Smith was promoted to the superior office. On his first public appearance as Attorney-General, on November 4th, 1915, when he presided at a dinner at the Constitutional Club, most of his speech was occupied by a defence of the then Prime Minister (Mr. Asquith), and Mr. Churchill, both of whom were being severely criticised. Of Asquith he said: "Whether you agree with the Prime Minister or disagree with him, whether you have admired or not admired his public record, he is a man who has grown grey in the public service. He has contributed three brilliant sons, not soldiers until this war, to the trenches, two of whom have already been wounded and all three of whom are serving, I

think, in infantry battalions. He is a man who, to-day, is bearing a burden of responsibility the like of which has never fallen upon any English statesman in all the history of this country."

In view of the criticism to which Smith had been subjected for accepting highly-paid civilian work during the War, it is only fair to record that when he became Attorney-General he, in association with the new Solicitor-General, Sir George Cave, made an arrangement whereby they relinquished an appreciable part of the emoluments of their offices. The gain to the Treasury was not immense, having regard to the scale of expenditure to which the country became habituated during the War; but the sacrifice was a thoughtful gesture to their professional colleagues, of whom Smith said about this time :

"The contemporary records of the Bar, it will be found, contain 10,000 names. Of these more than 5000 are the names of men between 50 and 75 years of age. Of the rest 2000 are the names of men who have not even left an address as a record. There are just 3000 practising members left, and of these 1300 are serving in the armed forces of the Crown."

As Sir Miles Martinson observed, at this time the office of Attorney-General "made more imperious demands upon the highest powers of mind and judgment of its holder, than at any other period." Of the work that fell to Smith the volume alone was enormous, and the nature of it was exceptional inasmuch as improvised regulations and emergency legislation had superseded much of the normal law. Further, Smith undertook additional duties in the

revision of findings of military courts martial, dealing with thousands of cases based upon military law. From this experience came permanent benefits to the Army, for Smith detected weaknesses and anomalies which were rectified in subsequent regulations governing courts martial.

During his service as Attorney-General Smith prosecuted in several cases which will, for all time, form part of the story of the War. Of these the Casement trial, in June 1916, was indubitably the most historic as it was the most sensational.

Sir Roger Casement had retired from the consular service in 1913, and being an Irishman, he found occupation for a pensioner's ample leisure by interesting himself in the political affairs of his native land, about the time that Smith was active in Ulster, and when the South, to which Casement belonged, was also arraying itself for battle.

The story of Casement's treason is familiar and need not be repeated beyond the statement that he was arrested in Ireland after an attempt to land arms from Germany, in which country he had raised, from Irish prisoners of war, a minute contingent called the Irish Brigade.

Smith's conduct of the case for the Crown was marked by great restraint. There was one episode which appears to have tempted his gifts of irony and sarcasm. In 1911, on receiving a Knighthood, Casement had written to Sir Edward Grey, his departmental chief, a fulsome letter of thanks. "I would beg (runs the letter) that my humble duty might be presented to His Majesty when you do me the honour

to convey to him my deep appreciation of the honour he has been so graciously pleased to confer upon me."

This letter and Casement's actions in 1916 presented a situation which, in the political sphere, would have called forth from Smith phrases charged with the acid of contempt. But here a man's life was at stake, and the Crown must never overstate or colour too highly its case against an individual. Smith's opening speech was sober, lucid, and despite an almost bald recital of facts, dramatic. The closing sentences are typical of the whole address. "The prisoner, blinded by a hatred to this country, as malignant in quality as it was sudden in origin, has played a desperate hand. He has played it and he has lost it. To-day the forfeit is claimed."

Incontrovertible as the guilt of Casement seemed to the public, the case involved much legal argument. The defence was based on the argument that Casement had aided the King's enemies while he was in Germany, whereas the Treason Act of 1351 ruled that treason was adherence to "the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere." Serjeant Sullivan's defence failed both before the High Court and the Court of Criminal Appeal. Cases and authorities were cited from the earliest days of the 600-year-old law.

As notable as his opening address was Smith's final speech to the jury. Their duty, he pointed out, could neither be avoided nor evaded.

"We live in critical and bloody days," the Attorney-General said. "To everyone to-day his function is



assigned. All in co-ordination serve the State. Many a man's duty beckons along that bloodstained road that leads to the trenches. Others have duties less perilous but of equal moment to the State. At this hour, you belong to that class. And if the Crown has proved its case you will render this service to the State to which you and all of us owe everything, that you will be mindful of your oath and of the duty of your citizenship.

"I have discharged my responsibility," he concluded, "I leave you in your consciences face to face with yours."

Sir Roger was sentenced to death, and the Court of Appeal found no ground for quashing the conviction. Still one hope remained to Casement. An attempt was made to appeal to the House of Lords. Smith was placed in a delicate position. No appeal can be lodged without the consent of the Attorney-General. He had argued throughout that there was no substance in the point raised by the defence. He had now to consider the position from a different point of view. To have consented would have been the easiest course, but it was not the course which duty indicated; so with characteristic courage he decided that he ought not to shrink from refusing the application, and without further proceedings Casement was deprived of his knightly rank and hanged. But Smith had not heard the last of the Casement case.

Next to this famous trial for treason, the most sensational business handled by Smith as Attorney-General arose in the early months of 1917 in the form of a plot to murder the Prime Minister.

Smith was faced with a matter of grave anxiety when he was called upon to decide whether a prosecution should be instituted against Mrs. Wheeldon and her two daughters, and Alfred George Mason, husband of the younger daughter, Winnie, on charges of conspiring to murder Mr. Lloyd George. To begin a prosecution and then withdraw it inevitably causes a loss of prestige which may have disastrous consequences when the offence in question is closely connected with politics. To remain inactive while crime is being planned, and may at any moment be committed, is impossible.

At first sight the plot seemed too melodramatic to be serious. Political assassination is a form of crime which Britons, in certain moods, sometimes profess a desire to see practised, but which is probably more rare in Great Britain than in any other country in the world. On the other hand, as recently at 1812, a Prime Minister of Great Britain, the inoffensive Perceval, had been murdered at Westminster, an event of which Smith, as a student of history, was unlikely to have forgotten. Apart from this consideration, however, the evidence uncovered by the two Government inquiry agents, Alec Gordon and Herbert Booth, who won the confidence of the conspirators by pretending to be in sympathy with the aims of the Wheeldons, proved that they were in earnest, and might at any moment find a man willing to carry out their plan of poisoning Lloyd George.

Mason, who had a knowledge of drugs and was an expert in chemistry, obtained and sent to the Wheeldons sufficient strychnine to kill fifteen

people, and a substance like the Indian arrow poison, curare, which is immediately fatal if brought into a wound or an abrasion. Booth was introduced by Gordon as a deserter in danger of arrest and a member of the society known as the International Workers of the World. Mrs. Wheeldon incited Booth to murder Lloyd George, suggesting a suitable place from which to shoot him with an air-gun, the pellet of which had been steeped in curare.

The trial of the four started on March 6th, 1917, at the Old Bailey, before Mr. Justice Low. Sir F. E. Smith led Mr. Hugo Young, K.C., Mr. (later Sir Archibald) Bodkin, and Mr. (later Sir Henry) Maddocks for the prosecution. Mr. Riza was for the defence.

After three days a juror was taken seriously ill, and the trial had to be started again. The hearing lasted five days. The defence was ingenious, and suggested that the secret service agents had made up the story and that the poison was to kill the police dogs with which the prisons for conscientious objectors were supposed to be guarded. Smith called conclusive evidence to refute this point, and proved that the prisoners were in such intimate touch with conscientious objectors that they could not have believed for a moment that dogs were so employed. Further, the poisons were unsuitable for killing dogs quickly and noiselessly.

Suggestions of the defence that Booth and Gordon, the Government agents, were unreliable, were refuted by the ease with which Booth sustained his cross-examination.

The Crown witnesses were believed by the jury, who found Mrs. Wheeldon and the Masons guilty, but acquitted Hetty Wheeldon. Mrs. Wheeldon was sentenced to ten years penal servitude (Mr. Lloyd George afterwards procured her release), Mason to seven, and his wife to five.

Smith's wisdom and courage in deciding to have the plotters arrested and prosecuted were justified by the verdict and by the marked manner in which the result discouraged idle and discontented people of the Wheeldon type in their damaging activities.

The House of Commons of the War years was not for Smith the place it had been to him. There were in it certain troublesome elements and many persistent interrogators, but contention along Party lines had ceased for the time being. Indeed, Party issues had, with the rough and tumble of electioneering, been so far forgotten that Mr. Lloyd George, on succeeding Mr. Asquith, in 1916, readily invited Smith to continue in the office of Attorney-General. Of course, the distribution of offices was not, to anything like the customary extent, a matter for the personal decision of the Prime Minister. After all, these were days of Coalitions, and the Conservatives watched their places in the team with a certain degree of jealousy. On this occasion Mr. Bonar Law and Sir Edward Carson were the watch-dogs. Nevertheless, Mr. Lloyd George had, in those days, a habit of getting his own way. Moreover, he was not, and is not, insensitive to criticism. In these circumstances, the fact that he accepted Smith as Attorney-General has some significance, for Smith had pursued him with bitter words

in the eight years preceding the War. He had described Mr. Lloyd George as a "nimble demagogue," as "one who would ruin the Prime Minister if he could supplant him." In Smith's pre-war opinion, Mr. Lloyd George "pursued his own vulgarity all over the country," his speeches were "fustian and clap-trap"; he would "invite the proletariat to leave work for loot." That these utterances were forgiven, if not forgotten, shows clearly that Mr. Lloyd George had for Smith that admiration which one vigorous fighter has always for another. Possibly, too, he had detected that radical strain which others perceived in the Parliamentary protégé of Joseph Chamberlain. Be these things as they may, the mutual regard which existed between Mr. Lloyd George and Smith in later years was not of sudden origin: it may have had its birth while the two men fired broadsides at each other from platforms in every part of the country.

Smith soon settled down to the leadership of the man he had right heartily denounced; but the spectacle of these two in comradely proximity on the front bench was not often afforded, for the Prime Minister was in the House but rarely and not for long. Smith, however, was in his place as frequently as his other duties permitted, and in the summer of 1917 he showed excellent Ministerial form in the handling of that unhappy business known as the Mesopotamia Scandal.

With the entry of the United States into the War in April 1917, some of the most difficult problems of international law with which Smith had to deal, ceased,

and thus he could be spared for the highly important task of visiting the United States to explain to its people what Great Britain had done, and to promote that unity of purpose between the two peoples that was so necessary to effective co-operation. When he returned, he was able to render further service by explaining in this country the war-effort of the United States. In an article which he wrote shortly after his return, he observed :

“ Although I was absent from England for one day less than eight weeks, I travelled altogether sixteen thousand miles and addressed forty-four meetings, and gave more than fifty interviews.”

Characteristic of his speeches in the United States is the following from his address to the Ohio Society in New York. Britons who were in America during the War can testify to the urgent need then existing for the dissemination of such information concerning the contribution of the British Empire.

“ When the great menace disclosed itself, what had we to oppose it ? If we took the desperate choice we were in a position to place at once in France eighty thousand men. The fateful decision which my country took almost in an hour was this—she would send those eighty thousand men containing her whole, her scientific staff of officers, instead of keeping them back as a centre and guide for those vast armies which even then we were determined to create. In the first week of war, with all our anxieties for our own future, and while men still talked of invasion, we sent all we had. And through failures and disasters by successive stages we have at last got



five and a half million British soldiers trained in the art of war. These amateurs can meet and defeat the best and most scientifically trained armies in the world. . . . You are going to travel the same road."

Smith's plans provided specially for meeting the lawyers of America and, indeed, he was accompanied on his tour by Mr. John W. Davis, then the Solicitor-General of the United States, who made this professional liaison the more effective. To the lawyers of the State of New York, Smith delivered a memorable address, surveying with remarkable clarity the whole history of international law, and concluding with an inspiring appeal for American co-operation in the task of ending the War.

The enthusiasm by which these meetings were marked may be gathered from the following description by a *Times* correspondent of a gathering at Chicago :

"Sir Frederick Smith, the Attorney-General, travelling with Mr. John W. Davis, Solicitor-General of the United States, arrived at Chicago on Monday. Their train was one of the few which reached the city, others failing to arrive owing to the blizzard. Every evening newspaper announced that the city would be visited by another storm at any moment, and warned the public against leaving their homes.

"In spite of these depressing circumstances, the Attorney-General held two remarkable meetings. All the Judges closed their courts half an hour earlier than usual, and 600 lawyers attended a reception given in the afternoon. The Attorney-General addressed them for 45 minutes. Great enthusiasm

prevailed. In the evening an audience numbering 6000 packed the Medinah Temple. Mr. Samuel Insull was in the chair. The Attorney-General spoke for an hour. Towards the end, when he was speaking of the unity and friendship of the two countries and all it stood for, the United States Solicitor-General leaped to his feet and seized the Attorney-General's hand. The audience mounted on chairs, and the cheering lasted many minutes."

Smith's reception was not, however, one of unbroken applause and approval. The Irish element in the United States, which had followed the Home Rule controversy with a degree of attention as great as, if not greater than, that it received in Ireland, were well acquainted with Smith's name, and they knew his record, which record had lost none of its colour by presentation in the anti-British newspapers favoured by the Irish-Americans. They remembered, too, his part in the prosecution of Sir Roger Casement.

This smouldering hostility to Smith was fanned by an interview published during his visit, in which the Attorney-General was alleged to have said :

" You will remember that a tremendous effort was made to save Casement, and, for a time, the Government was wobbling. I gave them the choice of Casement or myself. Nothing ever gave me greater delight than the execution of Casement."

On his return to London, he repudiated the interview, though it was hardly necessary, saying that anyone reading it would have known that it was almost entirely fictitious. He asserted that a three-column story had been made out of a few minutes' con-

versation. He added that he had given forty-eight interviews during his tour of Canada and America and in no other instance was he misrepresented.

The brevity of Smith's tour gave his enemies an excellent excuse for suggesting that he had been recalled, instancing some remarks about President Wilson's peace policy as the reason. This, of course, was untrue. Smith had accomplished his purpose, and more, for in addition to addressing, in all, about 100,000 people, he had conferred with the President and with a large number of distinguished representative men.

At home, too, his critics had been busy; questions were asked in Parliament about passages in his speeches. Why had his brother, Mr. Harold Smith, accompanied him? In what capacity had the younger Smith gone? (Mr. Harold Smith had gone with the Attorney-General as his secretary.) Who was paying his expenses? And so forth.

The questioner was, as a rule, the late J. M. Hogge, whose critical interest in Smith's activities was once rewarded by the discovery that, on his appointment as Attorney-General, Smith or the Government had neglected to comply with certain formalities and that, as a consequence, Smith was liable to financial penalties amounting to a staggering sum. Hogge was right, and a measure had to be passed into law to regularise the position.

Possibly as part of the campaign of disparagement, doubts were expressed, during Smith's absence, whether his tour was of any advantage to the cause. Happily these received a check by a cabled assurance

from Mr. Myron T. Herrick, then in Ohio between two tours of duty as the United States Ambassador in Paris, reporting that the visit was a great success and that Smith was giving in admirable fashion that explanation of Britain's effort which was so much needed in America.

Other tributes, too, were soon forthcoming and criticism was silenced.

Soon after his return, Smith had to deal with a particularly interesting appeal to the Privy Council which became known as the Southern Rhodesia Land Case.

Southern Rhodesia owes more than many of the settlers there realise to Smith's skilful handling of the case for the Crown, in the dispute between the British South Africa Company, the natives of Southern Rhodesia, and elected members of the Legislative Council for Rhodesia, which was heard before the Judicial Committee of the Privy Council in April 1918.

The dispute concerned the ownership of the unoccupied lands in Southern Rhodesia, lands of an enormous acreage which had not been assigned to the natives or granted to any settler or company. The mineral rights clearly belonged to the British South Africa Company, which had done so much to colonise the country. The value and importance of the districts, however, lay in the immense possibilities of their agricultural development, a matter, as Smith asserted, demanding the closest attention from those who have the welfare of the Empire at heart.

The British South Africa Company endeavoured to

suggest that the Matabele campaign of 1893 did not result in a conquest. This contention, Smith, who held the leading brief for the Crown with the Solicitor-General (now Lord Hewart, Lord Chief Justice), pointed out, could not succeed. Before the hostilities began Lobengula was the acknowledged sovereign. He was overcome, and immediately afterwards the Company assumed the sovereignty.

The natives claimed that they were entitled to benefit. Smith pointed out that not only were they unrepresentative of the dominant Matabele, but their claim was inconsistent both with the legality of all the land settlement that had taken place under legislative sanction, and also with European settlement together.

Many changes had taken place since 1893. The Matabele had ceased to exist as a tribe. The subject tribes had escaped from thralldom, and immigration and emigration had altered the black population almost as much as they had the white.

Although the elected members' case was consistent with constitutional practice, they were not in a position to show that there had been any limitation of the Crown's rights. The white settlers set up the case that whoever was the owner—the Crown or the Company—the lands were the heritage of the community of Rhodesia.

Smith's argument for the Crown was that the only satisfactory legal solution—here the great lawyer came to the fore again—looking at the question both historically and practically, was to hold that the unoccupied lands of Rhodesia were vested in the

Crown; that they belonged to the King, not in his private capacity, but as the head of the State. At the conclusion of the ten days' hearing the Judicial Committee acceded to Smith's argument, and the vast areas, with their promise of untold wealth, were therefore preserved for the community of Rhodesia.

Despite his arguments for the Crown, Smith was not unmindful of the work the Company had done in preserving Rhodesia for the Empire and in developing its communications and resources. He conceded in the course of argument that the Company was entitled to reasonable compensation, and the Privy Council so held. The sum awarded by a Commission, headed by Lord Cavé, which went to the district to examine the facts, was charged on the local revenues.

Thanks to his skill, then, Southern Rhodesia now possesses a vast estate, which is proving and will increasingly prove, as Smith predicted, an immense national asset.

With duties whose pressure did not relax with a vastly improved military outlook, the remaining months of 1918 passed swiftly, and when the Armistice came Smith, who, in August 1914, was in opposition, had served without changing his party under two Liberal Prime Ministers, one of them being the man for whom his bitterest invective had been reserved. Moreover, he had collected three war medals, he had been promoted to the rank of Lieut.-Colonel, he had been mentioned in dispatches, and from a knighthood in 1915 he had been advanced to the baronetcy in January 1918.



## CHAPTER XI

### THE GALLOPING CHANCELLOR

**E**VEN before the War terminated, Smith received an offer of what, within the legal profession, was regarded as promotion. Upon the death of Lord Parker he was offered the vacant post of Lord of Appeal in Ordinary. The position carried with it a life peerage and a salary of £6000 per annum. Smith was not long in considering and rejecting it, the whole transaction being completed within twenty-four hours. One pertinent fact which he had to consider was that if he continued as Attorney-General he would, with the coming of peace, revert to the full emoluments of his office, and his predecessor in normal times was making £20,000 per annum. It was an odd kind of promotion that required the sacrifice of his seat in the House of Commons and a prospect of £14,000 per year.

Smith continued in his position as Attorney-General, went through the Armistice Election of 1918, and returned to London to await the reconstruction of the Government. According to his own account, he was quite prepared to continue as Attorney-General on the terms on which he had served hitherto. But the Prime Minister had some difficulty in offering him his place on the same conditions, for there was a general desire to reduce the

dimensions of the Cabinet. As it was considered in normal times better, in the public interest, to exclude the Attorney-General than to include him, Mr. Lloyd George favoured a reversion to the normal practice, thus enabling him to reduce his overgrown council, by one place at all events. Smith was aware of the facts, and recognised the force of the argument that the Attorney-General was better outside the Cabinet than in it. These considerations, however, did not solve his problem.

For nearly four years he had enjoyed the status of a Cabinet Minister. His contributions to the deliberations of the Cabinet had never been other than useful, and in some instances had admittedly been highly valuable. He did not deserve exclusion from the Cabinet, and such a step would undoubtedly bring joy to his enemies. Had the harsh necessities of war made it advantageous to the nation, there is no doubt that he would have complied readily enough with the Prime Minister's suggestion; but peace had now returned, and he was under no obligation to make such a sacrifice. Accordingly he declined the office of Attorney-General.

The Prime Minister must have recognised the injustice to Smith involved in his original suggestion, for without further argument and, we are asked to believe, to the great astonishment of Smith, he immediately offered him the Woolsack.

In describing the events leading up to his passing of this milestone of his career, Smith insinuates that he was quite unprepared for any such offer. True, he may not have so weighed the pros and cons of the

situation as to be capable of giving a decision on the spot. Nevertheless, as a Cabinet Minister he must have speculated upon the personnel of the new Government. It is difficult to believe that he did not know that the Prime Minister was not favourably disposed to the Lord Chancellor who occupied the Woolsack before the General Election. To Smith, as a lawyer, the identity of the next Lord Chancellor must have been at least a matter of professional interest, and he could not have considered himself professionally ineligible for the office, because, as he has told us, when the last Lord Chancellor was appointed, he had "expressly made it known" that he was not a candidate for this distinguished place in the State.

In these circumstances it seems strange that Smith had not given full and decisive consideration to the advantages and disadvantages of the Lord Chancellorship. As it was, we find him at No. 10 Downing Street the recipient of an offer of the Woolsack, and with twenty-four hours in which to make up his mind whether he would accept it. The decision had to be taken without what, in many instances, proves the wisest form of counsel available to a man, namely, the advice of his wife. Lady Smith was absent from town, and for some reason could not be brought into communication with her husband. Next morning Smith and Mr. Winston Churchill took breakfast with the Prime Minister. Smith had passed a restless night, a circumstance which does not improve judgment. Further, in the course of conversation he ascertained that his intimate friend, Mr. Churchill, was not so

immovably opposed as he had previously been to the prospect of his leaving the House of Commons. Before breakfast was over, Smith had given a decision that would make him Lord Chancellor of England, the youngest Chancellor of modern times.

Had he been able to foresee a future controversy of minor importance to the nation, but of very considerable moment to Smith, his decision would have been different. He tells us that, in justice to his family, he would not have cut himself adrift for all time from active practice at the Bar, with no hope again of earning the emoluments which had been his before the War, if he had known that he would be denied the opportunity of supplementing his official income by journalistic earnings.

Smith's mention of his family in this connection makes relevant the comment of his elder daughter, Miss Eleanor Smith, at a luncheon given in his honour shortly after his promotion. Miss Smith said that, strangely enough, her father never consulted his daughter before accepting his appointment. "If he had," said she, "I should certainly have advised him that it would be much more amusing to be a Member of Parliament for Liverpool than to be Lord Chancellor."

Within a few days of his appointment, the new Lord Birkenhead had decided to make use of the official residence of the Lord Chancellor at the Palace of Westminster, an apartment that had never previously been used by the officer of State for whom it had been built. This fine house is situated behind the Victoria Tower, overlooking the river. It contains

about thirty rooms, including the nurseries on the top floor. It had the disadvantage, however, of lacking a number of modern amenities. The new Lord Chancellor had the place surveyed and indicated his wishes. He desired among other things the installation of a lift and of some additional baths. By the time the estimate was prepared, however, there was born a strong reaction against the spendthrift habit which the Government had formed during the War. From tolerance of profligacy in all things, financial policy swung to one of parsimony, and the plans for restoring the Lord Chancellor's house were not approved.

Prior to Smith's appointment, Lord Chancellors for many years had been senior or even elderly lawyers of that type who, though tinged with Party colour, had exercised considerable restraint in their political utterances. In these circumstances it was not to be expected that Smith's appointment would meet with unanimous approval. The legal correspondent of *The Times* described the new Lord Chancellor as "an Attorney-General who had diversified his career by activities which have never been associated with his office." Smith was stigmatised as "a lawyer in a hurry," possessed of "a fatal fluency of thought and speech," which had "tended to defeat great natural aptitude by the production of a temporising superficiality." He was accused of having opened claims in the Prize Court on behalf of the Crown "in a way which was so unjustified by the evidence that an undignified compromise became ultimately essential."

It is interesting to compare these comments with

the observations made in the obituary notice of Lord Birkenhead published in the same newspaper. It was there stated that, in the office of Lord Chancellor, Lord Birkenhead had "in less than four years proved himself to be so well endowed with the qualities both intellectual and temperamental which it required, that the misgivings aroused by his appointment were not only dispelled but rendered almost incomprehensible."

It has been said that Smith, in accepting the Lord Chancellorship, did so on the understanding that the House of Lords was to be reformed. Those who take this view do not agree concerning the advantage that would accrue to Smith. Some assert that he anticipated reforms that would make it possible for a Prime Minister again to sit in the House of Lords. Others visualised a House of Lords of greater influence and authority, in which the Lord Chancellor would, in political influence, rival the Prime Minister.

His entry into the House of Lords as Lord Chancellor was not without its amusing aspect. It is recorded that he made his way to the Woolsack with as much celerity as his procession would allow. Arriving, he took his seat, straightened his wig, took up his papers, and to the surprise of the silent and decorous House, he ejaculated "Order, order!" after the manner of the Speaker.

Almost from the moment that he took his seat upon the Woolsack, Lord Birkenhead made it plain to the peers that he did not regard his office as being comparable to that of the Speaker of the House of Commons. In theory and in practice the two posts have little in common, and the new Lord Chancellor,



while showing himself mindful of the dignity of the office, exercised very fully his right to express his opinion on any subject of the day, and to express it in such terms as he thought fit. His opponents in the House of Commons early perceived that they would have to abandon the comforting notion that the pertinacious person that they had known as Mr. F. E. Smith was to be stifled with the soft cushions of the Woolsack. At the end of his second year of office the official reports showed that he had a record of speaking unequalled in that year by any member of either House.

He gave to debates in the House of Lords a stimulus which, without doubt, improved the authority of that Chamber and revived in it a measure of public interest such as it had not known since the passing of the Parliament Act.

That he could at the same time sustain the ancient dignity of the office was early revealed when, a few months after his appointment, he paid a ceremonious visit to the Belgian Court of Cassation. The spectacle of this youthful-looking Englishman in the majestic robes of his office excited much attention, and his speech on that occasion not only impressed the learned company to whom it was delivered, but was expressed with that higher degree of eloquence which characterised most of his speeches as Lord Chancellor. His peroration on this occasion was noteworthy. "Gentlemen," he said, "the long struggle is over. Must we confess that with relief from the long suspense there comes to you here in Belgium some sense of disappointment and disillusion? You have

not returned at once to that sense of regulated comfort and prosperity which you knew in the summer of 1914. Your troubles and your anxieties remain. Not only is there irreparable grief for those who have fallen, but the future seems overcast—the way you have trodden seems stony and difficult and uncertain. You are not alone in this situation. We, too, on our side of the Channel, have to face great difficulties for the future. We have great problems to solve. Does it seem sometimes, therefore, as if the struggle had been all in vain? Believe me it is not so: and believe me that the wise man is he who contrasts his present situation, whether here in Belgium or over there in England, not with that happiness and prosperity which you and we enjoyed before the War, but with what would have been our fate had the issue of the War been otherwise. Gentlemen, if this great city of Brussels, if these Halls of Justice still rang with the feet of the invader, if his yoke here had become permanent, if the British Empire had gone down before him, what could have been the future for each one of us here and for all the generations yet unborn?"

This speech is in strange contrast with the club story, circulated no doubt by his critics and detractors, to the effect that when he went to Brussels he took with him the Great Seal of England, which certain Belgian Ministers were very curious to see. When the bag was opened, runs this yarn, it was found that the Great Seal was keeping company with a sporting publication of the more popular type and a flask containing what his Lordship would have described as "a stimulating beverage."

That, by contrast with his immediate predecessors, the Lord Chancellor was somewhat unconventional, is undeniable. His lack of orthodoxy, however, resided in his unwillingness to behave, at the age of forty-seven, like a septuagenarian. He played tennis vigorously, many of the finest players of the day being his guests at Charlton at the week-end. He raced with his yacht. He was often swimming and diving during the summer, and on one occasion when he went over to Ireland at a time when a visit to Dublin was a risk which insurance companies would cover only at a high premium, he gave his guard an anxious afternoon by attending a race meeting.

Withal he was extremely attentive to his duties, and those lawyers who had criticised his appointment read with growing interest the judgments he delivered as president of the judicial courts of the House of Lords.

Three weeks after his appointment Lord Birkenhead delivered his first judgment as Lord Chancellor. The court over which he presided consisted of Lords Buckmaster, Finlay, Dunedin, Atkinson and Shaw of Dunfermline. As a lawyer, and in point of age, he was appreciably junior to all these law lords.

This case was a prosaic affair, brought by a German firm to determine whether the outbreak of war dissolved or merely suspended a contract made with a British firm in 1873.

Thereafter hardly a week passed, except during vacations, when Lord Birkenhead did not deliver judgment in an important case. It is interesting to note that many of the earliest appeals with which

he had to deal came from Ireland. Strange must have been the emotions of Mr. "Tim" Healy, K.C., when he made his first appearance in one of these cases before the former "galloper" of the Ulster Defence Force; though, as lawyers, the two men had a considerable regard for each other.

Three months after he became Lord Chancellor Lord Birkenhead, himself a strong Protestant, was called upon to decide the legality of the bequest of an Irishman, a Roman Catholic, who left about £500 to Westminster Cathedral and the Jesuits in Farm Street, London, for Masses for the dead. It had always been held, even so recently as 1918, that Masses for the dead were illegal in this country.

Lord Birkenhead's judgment in this case was indeed remarkable. He referred to fifty-seven authorities and twenty-one Acts of Parliament, and ranged over English law, history and religious sentiment.

He held that citizens of Britain had for generations mistakenly held themselves precluded from making such bequests. "I cannot conceive that it is my function as a judge of the Supreme Appellate Court of this country to make error perpetual in a matter of this kind."

Toward the end of his judgment the Lord Chancellor summed up the issue in these words:

"The proposition, crudely stated, really amounts to this: that because members of the Roman Catholic faith have wrongly supposed for a long period of time that a certain disposition of their property was unlawful, and have abstained from making it, we,

who are empowered and bound to declare the law, refuse to other members of that Church the assurance and the relief to which our view of the law entitles them. My Lords, I cannot and will not be party to such a proposal."

Other members of the Court concurred, with the exception of Lord Wrenbury, who agreed with the Lord Chancellor's interpretation of the law, but held that, owing to the length of time during which the decisions now impugned had been in existence and had been acted upon, "it is too late to reverse them."

From January 1919 until he vacated the Woolsack in November 1922, Lord Birkenhead delivered judgment in no fewer than 155 cases. They ranged over the whole field of jurisprudence, from matters of commerce and shipping, and international law, to cases of wrongful dismissal and nullity of marriage. They are judgments of extraordinary clarity and are well within the comprehension of the layman. To review them, even superficially, in a work of the dimensions and scope of this biography is out of the question. At least mention should, however, be made of the Wakeford Case, because of all the cases in which Lord Birkenhead delivered judgment, none excited so much popular interest as did the appeal of Archdeacon Wakeford against the finding of the Consistory Court of the Diocese of Lincoln. Sitting with the Lord Chancellor, hearing this case, were Lords Buckmaster, Dunedin and Shaw of Dunfermline. Associated with the law lords in the capacity of assessors were four bishops.

The Archdeacon was charged in 1921 with an offence of morality against the ecclesiastical laws, in having stayed with a woman, not his wife, at an hotel in Peterborough. Lord Birkenhead's consideration of the case was as careful and painstaking as was his judgment dismissing the appeal. For nearly two hours he reviewed the evidence, indicating the conclusions to be drawn from it and interpreting the law where necessary. He took particular care to establish to the satisfaction of the Court that the entry in the hotel register was in the Archdeacon's handwriting. He was without doubt finally that the writing was the Archdeacon's.

Dealing with the much discussed question of why the Archdeacon should commit so openly an act that he knew must have serious consequences for him, Lord Birkenhead said that no one would readily believe that a man in the Archdeacon's position, even if prepared to commit the offence, would flaunt his name and distinctive dress in an inn and in the street of the cathedral town of a neighbouring diocese. The Lord Chancellor's view was that he did so because he must have thought that no one would believe such a charge as was made against him. Though he dismissed the appeal, Lord Birkenhead made some pointed observations on certain unsatisfactory aspects of the evidence against Mr. Wakeford.

Since Lord Birkenhead's death an interesting revelation concerning the Wakeford judgment has been made by Lady Birkenhead in an interview.<sup>1</sup> The Countess told the journalist that this judgment

<sup>1</sup> *Daily Express*.



took more out of her husband than any other case. "He suffered mental agony during his consideration of the evidence, for he wanted to believe that Archdeacon Wakeford was innocent. . . . But I knew his mind would be made up only by his consideration of the evidence. And so it was—by evidence which he loathed, but had to admit."

It may be of interest to record, in passing, that soon after the dismissal of his appeal the ex-Archdeacon told the present writer that the Lord Chancellor was favourably disposed to his appeal, but that, in the end, "Lord Birkenhead was overborne by the bishops." There is, however, nothing in Lord Birkenhead's career to suggest that he had at any time any excessive respect for the opinion of bishops, and it is inconceivable that he would allow his own considered judgment on questions of fact to be overborne by a whole convocation of them. The unhappy cleric, however, had a high regard for Lord Birkenhead, for he, too, had close relationship with Liverpool, and he, too, was a man of small beginnings. He was slow to believe that the "F. E." whose career he had followed and admired, and whose judgment he esteemed, had rejected his appeal. He seemed to be seeking some explanation that would at least make the fact less painful of acceptance by himself. The theory about the bishops answered his need.

It was as a judge that Lord Birkenhead presided over the House of Lords Committee on Privileges to examine the Viscountess Rhondda's claim, as a peeress in her own right, to sit in the upper House. He pronounced against the claim, thus establishing

the rule that still protects the Lords against "the intrusion of women."

As testimony to Lord Birkenhead's capacity as a judge no evidence could be more authoritative than that of Lord Dunedin, who so often sat with him. In a tribute to Lord Birkenhead paid shortly after his death Lord Dunedin wrote :<sup>1</sup>

"He was not a profound lawyer in the sense in which Lord Blackburn, Lord Macnaghten and Lord Sumner were when they first became members of the Supreme Tribunals of the House of Lords and the Judicial Committee. His practice had been largely in jury cases, and that is an experience which develops all the qualities of consummate advocacy but does not generally lead to great erudition in law. He was certainly quite unacquainted with Scottish and with Indian law. But he had two great qualities. He never thought he knew when he did not know, and he was utterly devoid of any false pride to prevent him, when he did not know, asking and informing himself till he did. Then his ability did the rest.

"I will give a concrete instance. In the week in which he became Lord Chancellor we were sitting in Scottish Appeals. He came and said he would prefer not to make his debut in a system with which he was unfamiliar. I told him that the present cases would be over in a few days, but that I knew that in a month there was coming from Scotland a case which turned on the feudal law of the seventeenth century. I said that he might rest assured that the minds of the other Law Lords except Lord Shaw would be just as virgin

<sup>1</sup> *The Times*.

as his own, and that I hoped he would sit. He did sit. The case was admirably argued by eminent Scottish counsel. In the long vacation he sent me his draft judgment with a request that I would read it to see if he had made any slip. I did not touch a word of it, and there it remains on the books as a most admirable exposition of one branch of Scottish feudal law. . . .

"The end of it has been that although other eminent judges who had a longer tenure have left more in the books, yet I do not believe that the judgments of any judge taken as a whole would show what I may call a higher average of excellence than his."

Early in his term of office Lord Birkenhead outlined a series of reforms as a task which he set himself. The most notable of these reforms was an extensive scheme of revision of property law. The others included a measure for reinforcing the Judicial Committee of the Privy Council, and the extension to poor persons of facilities for divorce which, though available in law, were in practice often denied by reason of the expensiveness of the procedure. He hoped, moreover, to overhaul the circuit system of Assizes and to improve county court procedure. Some of these changes were wrought under his Lord Chancellorship, and the continuity of policy in these matters which, happily, is a tradition of the Woolsack, ensured the introduction of others.

The reform of property law, known in the legal profession as the "Birkenhead Act," is the most solid of the achievements for which he was responsible.

Some members of the legal profession are wont to say that the "Birkenhead Act" should, if strict justice were done, carry the name of the draftsman, Sir Benjamin Cherry. In dedicating to Lord Birkenhead a law book of which he is the author, Sir Benjamin adds: "To whose Parliamentary genius the passing of the Law of Property Act, 1922, is by general assent attributed."

Further, Lord Haldane<sup>1</sup> in mentioning this Act as a measure to which he, in pre-war days, had made some contribution, says: "Lord Birkenhead, who showed much energy over the subject, succeeded in passing it into an Act, a feat which redounded to his credit." Other authorities hardly less eminent share that view, and while it was never claimed that Lord Birkenhead drafted the great Bill, the credit for its passing into law is his beyond doubt. The measure had been "hanging about" for many years during which the Woolsack had known several occupants. As a Bill it was beautiful, no doubt, but entirely useless. Lord Birkenhead made it useful, and that surely is a service even more creditable than the drafting of it.

Though in the matter of divorce Lord Birkenhead was able to improve the administration of the law, he was unable to secure its amendment in certain directions in which he considered the law was unintelligent and unjust. From the seat of judgment in considering the case of *Rutherford v. Rutherford* he had expressed himself strongly on one type of case in which the law inflicted great hardship on innocent

<sup>1</sup> *Richard Burton Haldane—An Autobiography.*

persons. In March 1920 he delivered in the House of Lords, on the Matrimonial Causes Bill, a speech which possesses a note of appeal such as is unusual in his utterances. It is, in parts, passionate in its appeal for justice. His description of the cruel position in law of young women who find themselves married to habitual drunkards was particularly moving, as was his appeal for justice for persons who are tied to incurable lunatics. "One day," he said, "I suspect that men will wonder how we sustained for so long a system so savage in its conception and so poignant in its consequences."

Lord Birkenhead's acquaintance with the subject of divorce was extended by an unusual circumstance.

The Divorce Court was congested with many cases for hearing, and the prospect of disposing of the arrears of business seemed negligible unless more assistance was afforded than was then available. The Lord Chancellor's remedy was simple. He himself went into the Divorce Court as a supplementary judge and heard cases on Saturday mornings. His first observation from the bench was characteristic: "Let us not make a long story of this." The sacrifice of Saturday mornings in the spring of the year was no small one for a man of his athletic disposition; but he had the satisfaction of solving expeditiously a problem which otherwise would have continued for a long period and might, in the end, have involved the country in the permanent expense of an additional judge.

In his endeavours to improve the administration of the law, Lord Birkenhead rejected the oft-tendered

proposal of a Ministry of Justice, a notion for which Lord Haldane showed considerable affection—though not, be it added, during his tenure of office as Lord Chancellor. From this change Lord Birkenhead was strongly averse. “It will only be brought into being,” he asserted, “over my official corpse. I am, in this country, the Minister of Justice. I have used my eye with, I hope, penetrating and certainly an impartial vision, on every competitive aspirant to that office, and,” he added lightly, “I am unable to discern one whom I think likely to discharge the duties better.”

In spite of his considerable legal and administrative duties, much private study of papers, his attendance at the House of Lords, and the reception of numerous honours on his appointment (including the Freedom of Birkenhead and a complimentary banquet in his own Gray’s Inn), Lord Birkenhead found time for much political activity. He inaugurated a Ministerial speaking campaign in support of the Government with a speech in Whitechapel, London, and was frequently heckled.

“If we had a Labour Government——” he was saying.

A voice : “God help us !”

“I think the Almighty has brought us through greater perils,” said Lord Birkenhead, amid laughter.

The peace-making processes in Paris sometimes claimed his attention, and there were occasions when he travelled to France by air to participate in the deliberations. Later he went to Genoa for an international conference, and generally he took a lively



and active interest in the post-war problems of Europe and the Near East. Once, at a conference, a rare event occurred. Lord Curzon scored over the Lord Chancellor in an amusing exchange.<sup>1</sup> Lord Curzon was pleading the cause of the Georgians and Azerbaijanians, Lord Curzon being always attracted by places and peoples whose location and history were known but vaguely (if at all) by his colleagues. He was extolling the sturdy independence and bravery of these neglected peoples when Lord Birkenhead intervened: "Lord Curzon (he said) has laid great stress on the bravery of these peoples. Can he tell us the names of any battles the Georgians and Azerbaijanians have ever won in history?"

That simple question seemed to have tripped the erudite Curzon, and the company laughed heartily. But Lord Curzon was not beaten. He retorted smartly with another question: "And can the Lord Chancellor tell us the names of any battles they have lost?"

In the House of Lords, however, it was unusual for a peer to have the last word in an encounter with the Lord Chancellor.

There were occasions when he was obliged to wield his old dialectal weapons, for although the Coalition Government included nearly all the ablest Conservatives and Liberals of both Houses, there were some who had no love of the Coalition and who lost no opportunity of attacking it.

The most notable political event of the Lord Chancellor's first year of office was his plan for the formation of a National, or Centre Party.

<sup>1</sup> *Politicians and the War* (Lord Beaverbrook).

The Coalition had begun to experience the inevitable reaction following the demobilisation of the Forces and a decline in the artificial prosperity due to war work. The Labour Party were scoring heavily at by-elections, and Mr. Lloyd George had ceased to be the darling of certain popular newspapers. In these circumstances the Lord Chancellor boldly proclaimed the need of a National Party to prevent the passage of the Socialists into power, through the fractured and warring ranks of the older Parties. Pre-war politics, he said, had disappeared. The Coalition which had served the country well in the War was unsuitable to the country's new needs. It was "invertebrate and ill-defined," and should be superseded by a combination of moderate men of all parties, under the leadership of Mr. Lloyd George, and organised with the same thoroughness and efficiency as the old Parties.

It is surprising that so profound a student of history could have believed it possible to produce a political party in this country by a process of ectogenesis. His error, indeed, was greater than is suggested by the simile of a babe produced artificially in a laboratory. In this instance the creation was to be brought into existence in full maturity, ready and qualified to take the reins of government. The idea was first mooted in a series of articles written by Lord Birkenhead for the *Weekly Dispatch*. All that can be said of the project now is that it provided very interesting reading for three Sunday afternoons in the winter season.

His next journalistic notion, however, was better

inspired. It was a plea for closer co-operation between employer and worker in an effort to achieve control of the industries in which their livelihood lies. He was prepared to concede a substantial share in "determining the internal economy of a factory." But in this project he recognised a fundamental consideration, which he failed to observe, or chose to ignore, in his proposal for a new Party. Here he asserted that the inspiration of the scheme "must be found not in the Cabinet room and on the green benches, but in the mills of Lancashire, the mines of South Wales, the shipyards of the Clyde, the blast furnaces of Middlesbrough, the weaving-sheds of the West Riding and the workshops of Birmingham. It must be born in the city, not in Whitehall." Given such a birth, legislation was assured.

It would seem, reviewing Lord Birkenhead's processes of political thought at this period as expressed in his speeches and articles, as though he were casting about for some inspiration that would enable him to make a substantial contribution to political history at a time when the social and industrial life of the nation was in a state of flux and when the passage of large measures was relatively easy. His opportunity was coming, but it was not to be concerned with the subjects with which he had toyed so entertainingly. Ireland was to afford him the opportunity which he sought, and his contribution to the solution of the problem of Ireland was to be set down as his most notable political service to his country and, indeed, to the Empire.

By some who read superficially, Lord Birkenhead

is believed to have executed a *volte face* on the Irish question in the course of the negotiations with the Sinn Fein representatives in 1921. This is demonstrably incorrect. Shortly after the Irish Treaty was signed, the Lord Chancellor publicly asserted that he had never challenged the right of the South of Ireland to govern itself. Certainly, in reading some of the more pugnacious speeches of the "galloper" days, one may discern passages which insinuate a doubt about the ability of the South to govern itself efficiently, but never a denial of its right to self-government. His concern was with the rights of Northern Ireland, and his threats of fire and slaughter were directed against those who, not content with conceding the right of the South, endeavoured to bring the North under the control of the South.

As early in post-war days as January 1920, nearly a year before the passage of the ineffective Home Rule Bill, and about two years before the signing of the Irish Treaty, we find Lord Birkenhead declaring that he would abide by the three principles laid down by Mr. Lloyd George: "First, that Southern Ireland must no longer be denied self-government; second, that the solid anti-Home-Rule population of Ulster must not be forced under a Dublin Parliament against its will; and third, that the secession of Ireland or any part of Ireland from the British Empire must be resisted to the end."

That statement brought no charge of apostasy, so far as I can discover, from his Ulster friends. Indeed, Lord Carson accepted the 1920 measure which embodied the same principles. If that policy were

not inconsistent with his pre-war utterances it is difficult to see how his assent to the Irish Treaty can be considered a treacherous action, for the Treaty is built upon that triangular basis. So firmly did Lord Birkenhead adhere to those principles that six years after the signing of the Treaty, when there appeared to be a disposition on the part of a certain responsible section of the Free State to seek a modification of the Treaty clause affecting the Oath of Allegiance, Lord Birkenhead gave an interview<sup>1</sup> in which he stated that he would never have signed the Treaty had it not contained this provision, and nothing would induce him to whittle it down or to allow its substance to be impaired.

The signing of the Treaty was one of the most momentous, as it was one of the most dramatic, events in Lord Birkenhead's career. The midnight hour, the historic setting, the contrasting personalities combined to make it memorable, apart from all that was implied in the event.

The limit of concession had been reached on each side, and the slender bridge upon which the negotiators had been able to agree had been improvised of phrases which had been examined and analysed with the greatest circumspection. Some of the most important were contributed by Lord Birkenhead.

All were acutely conscious of the responsibility they were taking. According to Mr. Lloyd George,<sup>2</sup> both Arthur Griffith and Michael Collins "saw the shadow of doom clouding that fateful paper—their own

<sup>1</sup> *Daily Mail*.

<sup>2</sup> *Daily Telegraph*, 23-12-22.

doom." After signing, Lord Birkenhead said to Michael Collins: "I may well have signed my political death-warrant to-night." Collins responded: "I may well have signed my actual death-warrant."

Within a few months the Irish leader ran into an ambush and met the fate he foresaw but did not fear. Lord Birkenhead's fate was less cruel, but the courage he showed in meeting the attacks of enemies, and, what was infinitely more painful to him, the denunciation of friends, had a quality not less inspiring than that which Collins displayed.

A day came, soon after the signing of the Treaty, when Lord Birkenhead had to defend his action before the House of Lords. There was much speculation about what his former Ulster commander, Lord Carson, would have to say to him, for Lord Carson's weapon of offence was deadly. Among others lying in wait for the Lord Chancellor were the Duke of Northumberland, the Marquis of Salisbury, and the Marquis of Londonderry, all powerful antagonists, and all of them men of immense influence in the Conservative Party.

Before the debate Lord Birkenhead was the guest of the American Luncheon Club. He spoke, in the main, of the Washington Conference of that period, and exhibited a level eloquence which showed that he was in excellent debating form. In his peroration he made reference to the Irish Treaty, and said:

"I go this afternoon to the last scene, so far as I am concerned, in this poignant drama. I go to the Philippi in which I am involved, greatly reassured



and comforted by the kindness I have received to-day."

The Lord Chancellor, says a contemporary report, had a remarkable send-off, the American Ambassador calling for "real American cheers" for him before he left the room.

It must be admitted that, as a speech delivered upon an historic occasion, Lord Birkenhead's utterance in the House of Lords that day falls below expectations. Evidently he did not class it with his best efforts, for it is not included in the last volume of speeches published in his lifetime. There is in that collection a speech headed "The Irish Treaty," but it is the address he delivered in moving the second reading of the Government of Ireland Bill (1920).

On the occasion of the Treaty debate, Lord Birkenhead appears to have been too conscious of opposition to have delivered a great oration. He was obviously desirous of vindicating himself. But he made a fine "fighting" speech of the kind which might well be reprinted with the legend :

*"Cet animal est méchant : quand on l'attaque, il se défend."*

Inevitably there were quoted against him speeches of his "galloper" days. The Lord Chancellor listened to them "with a very considerable degree of composure. Some of these quotations were expressed in a livelier fashion than I should in my present position repeat, unless I were in a condition of cerebral excitement. I do not recall one act which I would undo here and now if I could. I only recall one or two expressions which I would put in another way

if I had recollected that, when I was Lord Chancellor, they would be quoted against me."

Lord Salisbury had said that he did not trust the Government to afford protection to Northern Ireland if it were invaded from the South. "The noble marquis is very free in his invective at the expense of the honour of a Government which contains incomparably the most distinguished member of his own family.<sup>1</sup>" Did the noble marquis think that the people who staked everything for the protection of Belgium would allow any Government to carry on if they flouted such an obligation? "The noble marquis has no right to utter such a libel on the integrity and public spirit of the people of this country."

Lord Carson had made a contribution which the Lord Chancellor begged to be forgiven for describing as a very remarkable performance. "The noble lord has publicly repelled me and proscribed me from a friendship which had many memories for me, and which I deeply valued. The noble lord can do that. No one can prevent him. But he cannot deprive me of the memories indissolubly bound up with the past when we ran common risks in speech and act. I matched, and was glad to match, the risks he ran." As for the rest of Lord Carson's speech, "as a constructive effort of statecraft it would be immature upon the lips of a hysterical schoolgirl."

The Duke of Northumberland favoured coercion and repression. "In his mind every soldier is a super-man, every politician is either a rogue or a

<sup>1</sup> A reference to the Marquis's younger brother, Viscount Cecil.

fool." Lord Salisbury favoured a similar policy, but "shall we be any nearer a settlement when Lord Salisbury has raised his army and carried fire and sword into every village in Ireland, and brought back a new laurel to add to the military standard? There is no one who does not know that, on the conclusion of that war, with memories a thousand times more bitterly inflamed, Lord Salisbury would have to do then what we have done now—enter into negotiation and define the conditions under which we have to live our lives.

"One law lord thinks we are treacherous scoundrels for entering into these negotiations at all; another thinks that we are incorrigible fools for not having undertaken them a year ago. There are in the minds of men moods, and in the affairs of men moments, and you can never be sure when you have the mood or the moment at once.

"I will invite your lordships to vote to-night with a deep sense of responsibility, not confident, but still hopeful, that we shall see in the future an Ireland which will, at last, after centuries, be reconciled to this country—an Ireland to which both the contrasted systems will make each its own splendid and individual contribution—such an Ireland that, when the Dominions meet to decide the supreme issues of policy with the fortunes of that Empire, the Prime Minister of Ireland will lift up his voice to support and give expression to the historic destinies and rightful influences of that unhappy country."

Never was a man busier than was Lord Birkenhead at this period. On the Tuesday prior to his

philippic on the Irish Treaty, he delivered a judgment which Lord Finlay, a former Lord Chancellor, described as "a great and permanent contribution to the law on the subject of contributory negligence and to the science of jurisprudence." Then came, the following afternoon, his speeches at the American Luncheon Club and in the House of Lords. After dinner he motored to Sydenham, to the school of his younger daughter, where he distributed prizes and, despite the irritation and strain of a long debate in which he was the central figure, he delighted his young audience with an address whose wit and charm made it precisely appropriate to the occasion.

Forty-eight hours afterwards he was in the chair of the O. P. Club at a dinner given to the D'Oyly Carte Opera Company. Here, for a moment, the urbanity which he usually exhibited on these occasions vanished and he became distinctly angry. The proposer of his health had spoken in a sarcastic manner at the expense of previous speakers. In point of fact, though the Lord Chancellor did not know it, the offending speaker was well known for this somewhat unusual style of after-dinner oratory, and generally it was enjoyed by those who knew him. But it displeased Lord Birkenhead, and the unhappy man was told that he might have been accounted a wit thirty years ago. "However (said the chairman) I welcome all new experiences and I accept the toast, not in the spirit in which it has been proposed, but in the manner of your acceptance of it."

The versatility of his gift as a speaker was manifested again shortly afterwards when, at a Civil

Service dinner, he deputised for the Prime Minister. Here he made a pretence of delivering the speech which Mr. Lloyd George had prepared. It was an extremely witty performance of the kind of which Sir James Barrie is, perhaps, the foremost exemplar.

For several months he continued to work at very high pressure, without relaxing his social activities. Two notable events were a luncheon arranged in his honour at the Savoy Hotel by a group of 180 Members of Parliament, and a reception which he gave in the House of Lords to a company of over a thousand guests, the chief of whom was H.R.H. the Duke of York.

A day came, however, when he was obliged to relax. Newspaper hints of the indifferent health of Lord Birkenhead were followed by a statement from the Woolsack in which he announced that His Majesty had been pleased, subject to the approval of their Lordships, to grant him leave of absence so that he might take a complete rest. Overwork had manifested itself in eye trouble. It had become almost impossible for him to read documents. The mischief was not organic so much as the result of the strain imposed by his work. "It is a moderate statement of the truth (he added) that fourteen or fifteen hours labour daily are hardly sufficient to the discharge of the vast judicial, administrative, and political duties which attach to my office." The Peers expressed their sympathy, and appreciation of his work, and the Lord Chancellor left for a holiday. Incidentally, the treatment of his complaint made it desirable that he should discontinue for a time the habit of smoking. It was a considerable deprivation

for a man accustomed to about ten cigars a day. But Lord Birkenhead did not plead for a compromise. He discontinued the habit entirely for the prescribed period, an indication of self-command which he reinforced on another occasion by total abstinence from alcohol for a considerable period, not on medical advice, but merely as the outcome of a friendly wager.

On his return from leave the political sky was already showing signs of the storm that was to come, but there was no reason to expect that it would break in the autumn, except that there is inherent in politics something of the "glorious uncertainty of cricket." Steadily the prestige of the Coalition was declining, and Lord Birkenhead, whose touch with the constituencies had been almost negligible since his elevation to the Woolsack, appears to have lost that sensitivity to public opinion which he possessed in his days in the House of Commons. Had he been aware of the real condition of electoral opinion, his attitude of non-co-operation with the majority of his Party would indubitably have been the same; but some of his speeches and measures might have been different. When the collapse of the Coalition came, it appears to have taken him by surprise. He spoke hastily, angrily, and made the rift between himself and the majority of his colleagues wider than it need have been.

Firm loyalty to his friends and to his political leaders was always an admirable characteristic of Lord Birkenhead. By 1922, after nearly eight years of service with him in three governments, Mr. Lloyd



George was to Lord Birkenhead an intimate friend as well as his Ministerial chief. It was not to be expected that Lord Birkenhead would readily change his allegiance, but his obligations in this respect did not require him to use his great gifts against those men who were, not unreasonably, tired of Mr. Lloyd George and his post-war dictatorship and "wizardry." For those men were of his own Party, and included many to whom he had appealed only six months earlier in these terms: "We fought for thirty years side by side. Are they so forgetful as to suppose that in the dark, obscure years that lie in front of us we shall not need one another's co-operation. . . . Do not let us subordinate what is permanent, what is founded upon deep principle, to occasional and momentary grounds of divergence of opinion."

Nevertheless, Lord Birkenhead felt it his duty to appear on platforms in support of Coalition Liberals, including Mr. McCurdy and Mr. Kellaway, while advising voters in the Liverpool area, a territory particularly susceptible to his influence, "to vote only for those Unionist candidates who hold themselves free, if the event requires it, to continue that co-operation with Mr. Lloyd George and his friends which has been so fruitful in national achievements."

This advice he prefaced by a statement that "the shrewdest judges of electioneering are of opinion that it is inconceivable that Mr. Bonar Law will obtain a really effective working majority over all other parties in the House."

Elsewhere he declared: "I have lost, it is true, the

Woolsack, but I am still the captain of my own soul."

Thus he passed from office. He was, in accordance with custom, justly awarded promotion in the peerage. A viscounty having been conferred upon him in the previous year, he was now given an earldom.

## CHAPTER XII

### LEFT BEHIND

**I**N 1913 it was written: "When the Unionist Party comes into its own again Mr. F. E. Smith will be found standing on the hearthrug with his back to the fire." In 1922, for the first time since his election to Parliament in 1906, a purely Unionist Government was in office again, but the remarkable man who had been known as F. E. Smith, and for whom the Premiership had been confidently predicted, was not on the hearthrug. It could not be said that he was even on the doormat. He was outside, warming himself at the fire of his own indignation.

His belief that Mr. Bonar Law would not win the election had been falsified. The Conservatives had come back with a clear majority which, while it was not large, was nevertheless sufficient. The men whom Lord Birkenhead had derided as having "second-class brains" were enjoying the fruits of office. This spectacle must have been particularly galling to him because, by general consent, some of the Ministers were ill-fitted for the exalted positions they held. But the action of Lord Birkenhead, Mr. Austen Chamberlain and others had deprived the Party of the services of several of its most able and most experienced men.

In the circumstances Lord Birkenhead, for a time,

did the wise thing and looked the other way. In other words, he occupied himself for a time with other interests : but he could not remain aloof from politics for long.

It was reported at first that he intended to return to the Bar. The fact that Mr. Asquith, after a term of office as Home Secretary, had gone back to the Bar, was quoted as a precedent. The two instances, however, were not comparable. An ex-Lord Chancellor may not return to practice as a barrister. The explanation, as I heard Lord Birkenhead give it to one who had sympathised with him on being denied the right to work in his own calling, was simply this : that the Lord Chancellor is responsible for the appointment of judges. Lord Birkenhead, during his term of office, filled several vacancies in the High Court and in the county courts. Had he been permitted to return to practice he would, on occasion, have found himself before a judge for whose appointment he was responsible. Obviously, such a condition of affairs would ill accord with the traditions of British jurisprudence. Further, a Lord Chancellor receives a pension of £5000 per annum by way of compensation for what might be termed the loss of his livelihood.

Next to the law, authorship and journalism were remunerative occupations which appealed strongly to Lord Birkenhead. From his early days at Oxford his pen had never been idle for long. He had written a large number of newspaper articles, and books by him seemed to materialise at regular intervals. A large proportion of his journalistic contributions did not exhaust their value by newspaper use. When

a sufficient number had been published they were collected and re-issued in book form. There was little waste in the Birkenhead literary workshop.

When, in December 1922, he was the guest of honour at a dinner given by the Authors' Club, he was able to tell the company that he had written no fewer than eighteen books. The sum of Lord Birkenhead's contribution to literature, excluding political pamphlets and similar publications of an ephemeral kind, which were numerous, is twenty-three volumes. A few of his works have been republished more than once; a book which he wrote on *International Law*, and published in 1900, has now achieved a sixth edition. His modest text-book, entitled *The Story of Newfoundland*, ran into a second edition.

Lord Birkenhead's subjects ranged from *International Law as Interpreted during the Russo-Japanese War*, to a highly imaginative and very controversial book which is an attempt to forecast what life will be like a century hence.

Lord Birkenhead wrote with something like the same facility with which he spoke. Prior to 1923 his writing was not so interesting as his speaking. His style was inclined to heaviness. As a consequence, some of his speeches in printed form hold the interest of the average reader much better than do his writings of the same period. His departure from the Woolsack almost coincided with the publication of a book entitled *Points of View*. This may be regarded as the first book he wrote with a wide, popular appeal. It was accorded a very favourable reception. Encouraged by this and faced by the fact that for some time,

at all events, his services would not be at the disposal of the State, he decided to use his pen more industriously.

First he indulged in a needed holiday. He had, however, filled such a large place in public life that the newspapers soon became painfully conscious of his absence, and an amusing series of rumours came into being. In January 1923 we find the Marquis Curzon, then at Lausanne, issuing a dignified murmur that "He is not aware of any foundation for the rumour that the Earl of Birkenhead is to be the next Ambassador at Berlin."

A few days later we find the Earl himself telegraphing to Fleet Street: "The report that I have joined the National Liberal Party is, of course, a foolish invention." This report, no doubt, arose from the circumstance that, in the course of his holiday, Lord Birkenhead visited Mr. Lloyd George, who was enjoying a vacation at Algeciras.

On his return to London other rumours came into circulation, the most persistent being that he had been offered a place in Mr. Bonar Law's ministry and had declined it. As though to make the point even plainer, Lord Birkenhead renewed his attack upon the Die-hard section of his Party. In the House of Lords one afternoon he launched his invective against the Marquis of Salisbury and Lord Selborne, to whom he referred as "the Dolly Sisters of the Conservative Party." Further, of Lord Salisbury he said: "When I see Lord Salisbury sitting by Lord Curzon's side—Lord Salisbury, who for the last four years pursued us with malignant criticism, who impeached us, not



merely with criticism as to whether we were right or wrong in our decisions, but who impeached our morality and who for four years impeached the honesty of the Government of which Lord Curzon was a member—then I rejoice at the vicissitudes and and the paradoxes of politics.”

One retort made in a press interview with one of his noble victims was : “ Lord Birkenhead is a bad loser.” Had it been appropriate no remark could have been more wounding to him. Some of his critics said that none could be truer. Yet who would do justice to the man must recognise that when the game was played according to the rules, Lord Birkenhead was never a poor sportsman. He would lose gracefully to the better man. In this instance, however, he, who had never had a prize but what he had won by his own sheer ability, had the mortification of seeing rewards go to men of mediocre gifts and to urbane time-servers. He was not a loser in this contest for places. He had been a non-starter. The gibe, therefore, failed.

Nevertheless, it cannot be denied that at this period Lord Birkenhead appeared to have been generally ill-tempered. At the hearing of a law case in the House of Lords, Sir John Simon was not present to open an appeal in which he was leading Counsel, and his place had to be taken by a junior. Lord Birkenhead, as the presiding judge, commented on Sir John's absence in phrases that amounted to a sharp censure. Subsequently, Sir John appeared and offered a reasonable explanation, which Lord Birkenhead thrust aside, adding : “ Call the next case.” Whether

Lord Birkenhead was right or wrong in his interpretation of etiquette in this matter, it came as a painful surprise to the public to find him showing so much acerbity towards one who was not only a very distinguished member of his own profession, but a friend of nearly thirty years standing.

Shortly afterwards, attending the House of Lords, Lord Birkenhead took a seat on the front Opposition bench, amongst the Liberal Peers, and delivered a speech from that place. Apparently it had become known that he intended to do this, and the Marquis of Lincolnshire, the Liberal Leader in the House of Lords, had warned him that the question of its propriety would be raised. Lord Birkenhead read the warning letter, observing that he had not consulted Lord Lincolnshire in the past on the subject and he would not consult him in the future.

During the autumn vacation, Lord Birkenhead, accompanied by his daughter, Lady Eleanor Smith, sailed for New York. His purpose primarily was to fulfil an invitation to address a meeting of the American Bar Association. The day after he landed he caused some controversy by a criticism of ex-President Wilson. He said in a New York speech : " While the name of Dr. Wilson must always be revered by those who render homage to purposes almost superhuman pursued with a zeal almost as superhuman, yet it must none the less be recognised that his judgment of his countrymen was wrong, and that by an error of that judgment he became paradoxically enough the agent of all those post-war develop-

ments from which his altruistic mind would most especially have recoiled."

Elsewhere in the same address Lord Birkenhead said: "President Wilson indeed came with a noble message of hope, but unhappily in the sequel hope proved to be his principal equipment."

The protests against these observations had no great force, though London newspapers which were unfriendly to him made great play with them. The most prominent protestant was a gentleman who had been an Assistant Secretary in President Wilson's administration. The real feeling of the United States on the matter was better reflected by the American Bar Association, to whom Lord Birkenhead delivered the principal address of his tour. It is recorded in cabled news that when Lord Birkenhead appeared, members of the Association "rose to their feet and cheered him for several minutes." The fact that he was received on the platform by Mr. Taft, a former President, Mr. Hughes, the Secretary of State, and Mr. John W. Davis, formerly American Ambassador in London, is proof that his observations about President Wilson had given no real offence to any considerable section of the American nation.

Though the attempt of his critics to create a storm about him in America was abortive, he ran into heavy polemical weather soon after his return. In the week in which he resigned the Woolsack, Lord Birkenhead had been elected Rector of Glasgow University, defeating Sir John Simon and Mr. H. G. Wells by a very respectable majority. Home from America, he visited Glasgow and delivered a rectorial address on "Idealism

in International Politics." It was a discourse which raised immediately a good deal of discussion. This controversy was whipped with frothsticks by certain newspapers hostile to him. Two passages in particular were seized upon, torn from their context, and exploited by journalistic tactics of a kind with which the public, unhappily, is being made increasingly familiar.

The two passages most quoted were :

(1) "The school of idealism is the very antithesis of the school of self-interest. And yet nothing is more apparent than that politically, economically, and philosophically the motive of self-interest not only is, but must be, and ought to be, the mainspring of human conduct.

(2) "For as long a time as the records of history have been preserved, human societies passed through a ceaseless process of evolution and adjustment. The process has been sometimes pacific, but more often it has resulted from warlike disturbance. The strength of different nations, measured in terms of arms, varies from century to century. The world continues to offer glittering prizes to those who have stout hearts and sharp swords; and it is therefore extremely improbable that the experience of future ages will differ in any material respect from that which has happened since the twilight of the human race."

These extracts are merely dependent fragments of a lengthy and closely reasoned address, in which every major argument is supported by evidential quotations from history. Yet for his critics these bits, and even shorter snippets, were good enough.

"Self-interest comes first," and "Glittering prizes for war makers" may not be the phrases actually used, but they are, nevertheless, typical of the passages quoted by some critics.

Shocked dreamers expatiated upon "Birkenhead's 'glittering prizes' speech," without ever acquainting themselves with its general drift and purpose. The address was condemned in some instances on the same measure of information as that possessed by the "butter-and-egg man" from Wyoming, who said that for "real culture" there was nothing to beat "Gray's Elegy by Stoke Poges."

Evidently Lord Birkenhead suspected that even his more distinguished critics had spoken with inadequate knowledge of the address. To the Bishop of St. Albans, who described the speech as "the doctrine of the jungle," Lord Birkenhead retorted that even if the Bishop (whom he knew at Oxford) had read the address, he would not have been able to understand it. Mr. Asquith (later Lord Oxford) may equally have given it inadequate study, for though he said that the address consisted of "cynical barbarities," he asserted that it was not even necessary to answer them. The reply is one that might well be given by a tactician who had "skimmed" a document and found himself expected to comment upon it.

To his critics Lord Birkenhead made a spirited reply in a speech at Manchester. He had not, he said, enunciated a new creed. He was called upon to address young men, and he deemed it his duty to speak to them in terms of truth as he understood the

truth. What he gave them was the "seasoned, historical philosophy" by which he had regulated his life, including his whole political career.

Had we been adequately prepared for the Great War in 1914, that war would have been over in nine months. What was Mr. Asquith's Party doing during the period when men like himself were urging the country to face the facts? As an illustration he quoted Sir John Brunner, who said that he would "rather place his confidence in international law than in the whole strength of the British Navy." As a consequence of this leadership we were not prepared; the war lasted four years, and nearly destroyed the British Empire. Those who, like himself, had incessantly, between 1906 and 1914, called attention to the reality and the imminence of that danger were entitled to claim from their country some small respect for their judgment.

"When I tell young men who look to me for guidance that the world has not changed, I am to be reviled." He did not mind being reviled "by a stupid bishop"—because you must take the measure of the bishop—but, when men set out to discover which was the true and which the false idealism, he asked them to take the great controversies of the last fifteen years and discover whether he had been right or wrong.

Was he to be silent when men were preaching the same crazy doctrine as was taught before 1914—that there would be no more war? Wherever he met such sentimental folly he would castigate it.

What was the false school of idealism which was



barbarous and cynical? "It is those false prophets who tell an imperfect world that you may lay aside the only weapons in a competitive world that count, and the only weapons in reliance upon which, in the agony of its fate, a great nation and a great empire may find the means to its existence and survival."

Lord Birkenhead's last word on this address is contained in the preface to his book *America Revisited*, where he says: "Strangely enough, it was never criticised upon its weaker side; namely, that it contributed little to the volume of ascertained and established truth."

Meanwhile, in the month in which he delivered the rectorial address, Mr. Baldwin, who had succeeded Mr. Bonar Law as Prime Minister, wrote to Lord Birkenhead, inviting him to call. Mr. Austen Chamberlain was also accorded a similar invitation. In the end nothing came of this obvious effort to facilitate the return of these two important leaders to the official fold of the Conservative Party. Nevertheless, both of them assisted at the General Election which came in that month, and as proof of the fact that Lord Birkenhead still retained his hold upon the country, it was mentioned in an interview that he had received no fewer than 130 telegrams or letters inviting him to speak. This fact hardly bears out the statement to which the *Manchester Guardian* gave publicity the following day to the effect that the reason why Lord Birkenhead was not admitted to the Ministry at the time Mr. Baldwin sent for him, was that many of the most influential Conservative women were highly indignant over Lord Birkenhead's

Glasgow address, and that they had represented their views to the Conservative headquarters.

Five years later Lord Birkenhead had occasion to deliver another rectorial address, this time at the Aberdeen University. There are passages in it that illuminate his attitude towards the kind of idealism that he criticised at Glasgow. It is well, perhaps, to reproduce them here.

“Certain present-day social and political controversialists (he said) suffer from a mania for vague generalisations. The late President Wilson was highly gifted in this respect. These ‘thinkers’ delight to embrace a continent and all its people within the compass of a single half-truth; they condemn a generation, a government, or a philosophy in a presumptuous paragraph of ill-considered rhetoric. Ignoring the teachings of history, which alone may afford a probable estimate of the present, or prognosis of the future, they dispose of all problems with an airy affectation of omniscience. They replace fact by random speculation, human experience by frothy and unreasoned hypothesis. They twist evidence to found a gimcrack Utopia.”

Later in the address Lord Birkenhead observed :

“It is infinitely harder to be honest with ourselves than with our fellows. Public opinion, no less than the sanctions of the criminal law, are healthy deterrents against social dishonesty. But no machinery of policemen and prisons menaces him who seeks to cheat his own intelligence. He who is guilty of loose thinking, and an indolent acceptance of the pleasant in place of the true, is arraigned before no tribunal,

is punishable by no court of law. Nevertheless certain retribution pursues him. Because he is too indifferent to face the logical conclusions of the facts which life presents to his notice, preferring rather to interpret these facts in the light of preconceived theories agreeable to his inclination, the loose thinker is condemned to eternal failure in all great enterprise. Intellectual disingenuousness, as I have attempted to show, is the fundamental vice of unsound social conception. Its results will betray the fulfilment of every enterprise based upon this quicksand; and, in the same way, retribution will overwhelm each one of you who indulges in its superficial and fugitive comfort."

That in politics Lord Birkenhead honestly faced the facts, even when they were embarrassing to the policy of his own Party, is evident in several of his utterances.

In 1910, when he found himself at variance with his leader (Mr. Balfour) on the subject of payment of Members of Parliament, he said so, and justified his action in the phrase: "My object is to recommend a policy which meets the realities of the situation." Again, in 1921, after the Irish negotiations, Mr. Michael Collins said of him: "He was always loyal to the facts."

It was this loyalty to facts which appears to have made it impossible for him to agree with the more lofty idealists. His Glasgow address plainly acknowledges the value of the idealist so long as his efforts to elevate human conduct do not attempt to impair "motives which are fundamental in human nature and vital to social economy."

To him, ideals appeared as horses to be kept harnessed to realities : so long as they advanced with their load behind them nothing but good could result. When, however, the leads were broken and the horses were galloping ahead indifferent to the task they were intended to perform, he was scornful of them and of their admirers.

In December 1920 he wrote : " No nobler ideal was ever put before the public of the world than the ideal of the League of Nations. Yet we see, certainly with sorrow but I hope not with astonishment, how painfully the realisation lags behind the ideal." No outcry appears to have been provoked by that assertion, yet it is substantially the same as a passage in the Glasgow speech which contributed its quota to the general body of protestants. There he said : " While I believe that there was, and still is, a modest area within which the League of Nations may make useful contribution to the harmony of the world, the larger claims made on its behalf always seemed to me to be frankly fantastic. Its framers forgot human nature as absurdly as they neglected history."

Facts—history—human nature—realities : these and their synonyms recur continually in his addresses on ethical matters. In his speeches on the reform of the divorce laws, the same firm anchorage to realities is discerned in many passages, of which one of the most notable is : " I say with all reverence that I do not believe that the Supreme Being has set human nature a standard which two thousand years of Christian experience has shown that human nature, in its exuberant prime, cannot support."

In this matter those who would be just to Lord Birkenhead will concede that his knowledge of human nature was exceptional. Who doubts it should peruse his judgments in the published volume. Here are many cases in which a decision depended as much upon such knowledge as it did upon legal erudition. Whether a lawyer's experience of human nature is a fair standard by which to measure human nature is debatable, but Lord Birkenhead was no cloistered legal pedant. Few public men had contact with so many of the types and classes that go to make up a community. Indeed, one commentator<sup>1</sup> on his career observes: "His sociability brought him in touch with circles where other Lord Chancellors would not have been equally welcome."

After his retirement from the Woolsack Lord Birkenhead continued, in accordance with custom, to do duty as a Law Lord. Among the more notable judgments to which he contributed was that in the particularly difficult case in 1924 of *Russell v. Russell*, a sequel to a famous divorce court action.

The visit to London of the American Bar Association found him again among those colleagues of the United States whom he had twice met in their own country. His eloquence and legal knowledge had no more ardent admirers than these American lawyers, and he had a very flattering reception when, in the summer of 1924, he addressed them at a banquet in his own Gray's Inn. This was another of those rhetorical performances which probably none but Lord Birkenhead could accomplish. The speech proposed the

<sup>1</sup> *The Times*.

toast of the guests. Beginning with a brief history of the Inn, made fascinating by picturesque allusions, he passed to a eulogy of its most famous member, Francis Bacon; then he pictured Queen Elizabeth with her courtiers and maids of honour treading the paths of the garden of the Inn, a garden which he observed conformed in some respects to Bacon's own ideal pleasaunce. Thence he passed, almost imperceptibly, to the spectacle witnessed that afternoon of the children of the American guests playing in that same English garden within which Bacon walked so often. With this picture delighting the minds of his hearers he asked whether the youth of America need be made to dwell upon the deeds of George the Third and Lord North. Might not the dead past be left to bury its past: were the two great English-speaking countries to be placed for all time under the memory of the past? Better, far, to devote their lives to the vital present and the immensely important future.

That was one Lord Birkenhead—the scholar, the bookman, the lover of picturesque antiquity, of the quietude of old gardens. A stranger would never reconcile this charming speaker with that aggressive Lord Birkenhead who, a few weeks later, was telling a turbulent election crowd:

“I'm not afraid of your barricades. We've beaten you with brains, and if it comes to fighting two can play at that game. Put up your barricades! We'll slit your soft white throats for you!”

From such a threat he would turn at another gathering to extol the English language, “the



language in which Juliet whispered her love and Romeo sobbed out the agony of death."

Back again on a platform at Swansea he answered a heckler, who was suggesting some fantastic way of raising taxation, with the suggestion :

"Why not cut a few throats while you are about it ?"

"I'd like to cut yours !"

"You are welcome to try," replied the complacent Lord Birkenhead ; "but judging by your appearance, I don't think you would succeed."

Such were the terms in which he spoke to Socialists at this Election of 1924, and evidently he expected other Conservatives to do the same, judging by an episode in which the present writer had a part. Before this meeting Lord Birkenhead was dining in a Swansea hotel, where also was Mr. E. T. Neathercoat, who was fighting the adjoining Gower Division, which, consisting largely of mining villages, was almost a forlorn hope for a Conservative. The Gower candidate in the course of conversation asked Lord Birkenhead for a message which might be read at meetings. He acquiesced very readily, and when the note arrived we found that among the sentences we should have to read to our audiences of truculent pitmen and Socialist iron puddlers were : "All the forces of sham and imposture are arrayed against you. . . . I advise you neither to ask for quarter nor to give it." It was decided to release this incitement to violence on the eve of the poll. There were still some days of campaigning to be done, and we wished to be heard !

In this campaign of 1924 Lord Birkenhead rendered

very notable service. The breach between the Conservative Party and himself was as far healed as it was ever to be, and he spared himself no exertion travelling the country in the Conservative cause, everywhere addressing houses overflowing with eager listeners. Some might heckle; but they had to listen, if only because Lord Birkenhead invariably had the last word, though the heckler might bring the exchange down to the level of gutter repartee.

So as an orthodox Conservative he took part, for the first and last time in his life, in a General Election won by his Party. The victory brought him back to office as Secretary of State for India.

## CHAPTER XIII

### IN OFFICE AGAIN

**T**HOUGH his duty was in the India Office, Lord Birkenhead made it clear very early in this new chapter of his career where, for the moment, his heart was. Within a month of his appointment he was speaking and writing vigorously on the Reform of the House of Lords. In that extensive field of policy to which the new Conservative Government, backed by a record majority, was to give its attention, he staked out a claim and proceeded at once to focus the public mind upon it. He felt strongly that the duty of the Government was to obtain for the second Chamber the maximum of constitutional power "which can reasonably be defended and securely held if the vicissitudes of politics deliver the reins of government into the hands of the Socialists." He made it plain, however, that the Party would gain nothing, but, on the contrary, would lose much, if the Government used its remarkable majority to endow the House of Lords with powers which might later be challenged at the polls and repudiated.

The new Government was not six months old when the Duke of Sutherland tabled a motion in the House of Lords calling for papers with regard to legislation for the reform of the House of Lords. Supporting

this motion, Lord Birkenhead said that neither he nor any other Minister was prepared at that moment to come forward and say, "this is the plan, this is the proposal of the Cabinet." Nevertheless, he outlined a scheme which would reduce the number of the House to about three hundred members and at the same time make it a really effective legislative chamber. His scheme included an arrangement whereby peers who were also Ministers would have a right, when their policy was being discussed in the House of Commons, of attending and addressing the other House. Further, he visualised something even more revolutionary, namely, a joint session of the two Houses to deal with differences which had been found insoluble by existing methods. This part of his proposal, he said, attracted him particularly, "because in days when Parliamentary government and Parliamentary institutions are discouraged and assailed, I value everything which adds to the dignity, the appearance, the ceremony of Parliament; and I can conceive nothing more stirring to the imagination at a time when great issues have disclosed themselves between the House of Lords and the House of Commons, than that both bodies, which have been so greatly contributory to the political fortunes of the country in the past, should meet together with the responsibility that an occasion so striking and conspicuous would surely bring, to see if any method founded upon reason or compromise could not be adopted to settle the particular controversy that had arisen between them."

In the end nothing came of his proposals, and

although later, "soundings" were made officially upon a scheme which the Government had devised, the subject was rather hurriedly dropped, and Lord Birkenhead's hopes were dissipated.

Meantime, the affairs of India began to absorb his attention, and, in the summer of 1925, Lord Birkenhead outlined, in the House of Lords, the Indian policy of the Government. In this speech the new Secretary of State reviewed the financial, commercial and military situation in India, coming finally to the difficult subject of the Constitution. In touching upon the future government of India, Lord Birkenhead forecast the formation and work of the Simon Commission, summing up the intentions of the Government in these words: "It is our purpose resolutely, tirelessly and wholeheartedly to labour for the well-being of India. We no longer talk of 'holding the gorgeous East in fee.' We invite, in a contrary sense, the people of India to march side by side with us in a peaceful and harmonious partnership." At the end of Lord Birkenhead's address, the Socialist peer, Lord Olivier, remarked that the noble Earl had evidently addressed himself to his task "in a spirit of statesmanship and goodwill."

Unfortunately, the high tone of this speech was not the note to which all Lord Birkenhead's subsequent utterances in the House were tuned. He appears to have allowed himself to be unduly irritated by the criticism of the Die-hard press which, in consequence of its disapproval of the Irish settlement, had pursued him with a campaign of spiteful innuendo. Such was his annoyance that, in a discussion upon the proposed

Irish boundary agreement, he attacked certain Diehard peers with considerable violence, describing the speech of one of them as "the most foolish utterance he had heard in the House of Lords," and the noble lord's advice to his countrymen as "imbecile maunderings." A few days later he inflicted similar castigation, for no adequate reason, upon three other peers, among them Lords Haldane and Oxford. Lord Haldane he described as "a blackleg in the legal profession." Lords Haldane and Oxford had, declared Lord Birkenhead, "delivered speeches which showed signs of intellectual preparation, and he wondered that they thought it worth while to do so." It was, however, for Lord Arnold that, on this occasion, he reserved his most acrimonious comments. Lord Arnold's "air of arrogant superiority was," he said, "intolerably offensive. Listening to him one would think he was the only man who had any brains or comprehension of business. I am not aware," continued Lord Birkenhead, "that he has established any ascendancy in the business community. What does he know of American commercial opinion? What evidence has Lord Arnold given that he would ever be able to make ten dollars on Wall Street?" The noble Lord had displayed "muddy processes of thought."

On this occasion Lord Haldane rebuked Lord Birkenhead, describing him "as one of those strange animals in the Zoo who are obviously out of their natural element on the bench on which they sit."

An attempt was made to represent these attacks as causing embarrassment to the Cabinet. Suggestions



were published to the effect that unless Lord Birkenhead abandoned such violent methods of controversy he would be compelled to abandon his office. This was one of those political predictions which it was possible to make with a certainty that events would lend colour to them. In this instance the Christmas vacation followed immediately upon Lord Birkenhead's speech. As a consequence, he dropped out of the news, and the unthinking, conscious only of the fact that Lord Birkenhead was no longer being reported in the Press, concluded that he had been admonished by the Prime Minister and had lapsed into silence. It is not surprising, then, to find that Lord Birkenhead's next speech contained comments upon "the brilliant omniscience of the Press."

In the spring, however, when Parliament resumed, the limelight had moved from Lord Birkenhead to Mr. A. J. Cook, the volatile leader of the miners. Lord Birkenhead, however, refused to enter into competition with Mr. Cook. He said: "I cannot imitate the artifices upon which Mr. Cook's rhetoric relies, of tearing off his collar and his studs in order to lend artificial reinforcement to his utterances."

Of Lord Birkenhead's part in the inner counsels of the Government during the General Strike, we are unlikely to hear anything authoritative for some time to come. We know, however, that his share in the Cabinet deliberations was a large one, and it is not improbable that when Mr. Baldwin wrote in his farewell letter, "In dark days you were a tower of strength," he had in mind that extremely critical period in 1926. In the official documents of that

period are many phrases which, to those who have studied Lord Birkenhead's speeches and writings, have a very familiar ring. Nevertheless, it will be surprising if, when the full story of the General Strike is told, evidence is forthcoming in proof of that rumour, to which "Ephesian" lends authority, that Lord Birkenhead wrote the historic appeal, broadcast by Mr. Baldwin, which contributed to the collapse of the Labour attack.

Shortly afterwards Lord Birkenhead afforded what was undoubtedly a reflection of the attitude he assumed in the Cabinet towards Labour aggression, when he spoke at Manchester upon the Trades Union Disputes Bill, whose aim was to put an end to the compulsory payment of the political levy by Trade Unionists who were not sympathetic to the policy of the Labour Party. The Socialists had launched a campaign with a view to rousing their adherents to the strongest measure of protest of which they were capable. To this Lord Birkenhead replied: "Here and now we say, 'Call all your meetings, blow all your trumpets, make all your speeches, unfurl all your red flags—and when you have done it all, the Bill is going through Parliament.'"

Nor was Lord Birkenhead's vigorous oratory reserved for the denunciation of the folly of Labour in calling a general strike. He felt it his duty to open the eyes of the public to the connection between the Russian policy of interference with British interests and the grave situation in China, where British lives and commerce were menaced by civil war. He continued to defend his actions in the Irish settlement

against critics who seized upon any Irish incident as an excuse for rancorous comment. Further, he addressed to America a frank but friendly plea for a proper understanding of British Imperial problems and achievements, and for a more intelligent appreciation of British naval requirements.

Meantime, his own Department was not without its anxieties. The situation in India was more than usually troubled by reason of the elections then imminent. Moreover, it fell to him to take the action necessary for the setting of the inquiry which later became known as the Simon Commission—a Commission which, as he once said, “none more responsible ever left these shores.” The action he took in securing the services of Sir John Simon as chairman of the Commission was applauded as a touch of genius, though, as Lord Birkenhead said, the credit should go to Sir John Simon, who was making an immense sacrifice in undertaking the difficult duties which awaited him.

The Secretary for India had, nevertheless, to face considerable criticism owing to the fact that no Indians were included in the personnel of the Commission. His answer to the complaint was that Indian representation on the Commission could only be secured by including some eighteen or twenty persons, in order to give equal voice to the diverse races and religions of India; the exclusion of any one of them would have given deep offence to the element unrepresented. Did anyone suppose that from a Commission so constituted anything like a unanimous report would be forthcoming?

That section of the British Press which consistently criticised him now had, as an ally, the vernacular Press of India. With this reinforcement of his critics Lord Birkenhead made no effort to compete.

He found diversion in the return to the political arena of an old subject of controversy, feminine suffrage. Here he was in a situation which a less able man would have found very embarrassing. The Cabinet regarded itself as committed to an extension of the franchise to women on the same terms as men. Lord Birkenhead was not sympathetic. "I was against the enfranchisement of women, I am against, and I always shall be," he declared. Nevertheless, he did not oppose the Franchise Bill promoted by the Government. He adopted the view that it was useless to oppose a measure to which the leaders of all Parties were committed. Further, as he had predicted as long ago as 1910, once the principle of votes for women was conceded, in however limited a measure, full enfranchisement was only a matter of time, and would extend even to the "unenlightened Zenanas of the East." To those who asked him why he did not resign because he was not in sympathy with the Cabinet on this question, he replied that all Cabinets were divided on every question of importance, and if everyone were to resign directly he disagreed on any point, no Cabinet would last long. His speech on this occasion was commended by one of the most notable political commentators<sup>1</sup> as "one of the boldest and best speeches that Lord Birkenhead has made for a long time, and its verbal felicities

<sup>1</sup> "A Student of Politics," *Daily Telegraph*.

should not blind anyone to its essential seriousness in argument."

During his term of office as Secretary of State for India, in spite of his many preoccupations, Lord Birkenhead did not neglect to exercise his gift for the non-political and scholarly type of oration. Of his non-contentious addresses at this period, none is more likely to attain immortality than his speech at the Sir Walter Scott Club at Edinburgh. In the course of an address which revealed him again as a master of language, Lord Birkenhead disclosed the fact that before he went to Oxford he had read every one of Scott's novels at least three times, and he did not believe that a period of five years had passed since that time without his re-reading every one of them. While paying a rich tribute to Scott as a writer, Lord Birkenhead devoted a large part of his address to an appreciation of him as a man. "He was sprung from the loins of men who had ridden hotly in many a mad foray, in many a bloody raid. I cannot doubt that had he been free to determine his own career, had he not suffered from childhood from depressing physical ailments, he would have wished for himself, responding to the blood that flowed through his veins, the career of a man of action." Returning to this theme later in the address, he added: "I am sure that there has been no poet since Scott wrote who has taught so attractively to adventurous youth the story and the gallantry of the past; who has taught it more to the profit of the present; more to the hope of the future. I am sufficiently a believer in the teaching of Scott to be

sure that neither in this world now, nor hereafter, will it be an easy world to live in. I have never been able to persuade myself that the arms of the strong will not again and again be required by Britain in the years that lie in front of us. Let us by all means devote every influence of which we are masters to avoid war; but do not let us be so blind to the teachings of history as to believe that great possessions will be permitted in the future of the world to soft peoples. They never have been; they never will be."

During this period of his career Lord Birkenhead delivered another notable speech to which reference has previously been made, namely, his address at the unveiling at Neuve Chapelle of the memorial to the Indian troops who fell in France. In his tribute the Secretary for India said:

"It would be insincerity to pretend that the object with which the war was waged could have been known, or was known to the majority of the Indian Army. . . . Many a humble soldier, one suspects, must have thought of his far-away village, sun-swept, unmenaced, and wondered what inscrutable purpose of whatever deity he worshipped had projected him into this sinister and bloody maelstrom. It is, in all these circumstances, the special soldierly virtue of these troops that they met with undefeated eyes the crash of a novel and horrible war, certainly without the clear, perhaps without the discernible, stimulus of a danger to their own homes or to their own wives and children.

"Whence, then, came this spirit of endurance and of high endeavour? It came from the twin sources



of an inborn and simple loyalty ; of an instructed and very perfect discipline. Like the Roman legionary, they were faithful unto death. They had accepted a duty. They discharged it. More cannot be said : more need not be said."

Lord Birkenhead paid a tribute also to the British officers who fell leading the Indian regiments, and to the memory of his former chief, the Commander of the corps, General Willcocks—"On him, too, may the earth rest lightly. If such things happen ever, or can happen, be sure that his spirit is in our midst to-day." That slight reference to the possibility of survival after death recurred at the end of his address, where Lord Birkenhead said : "And so in an alien soil we leave the Indian troops where they died. If the intuitive belief of mankind throughout the ages be well-founded—if a region of happiness awaits the true and the valiant—may the spirit of these men in that region know that they did not die in vain."

Before leaving France, Lord Birkenhead lunched with a distinguished company which included Marshal Foch, who had been present at the ceremony. It fell to Lord Birkenhead to propose the toast of the great soldier, and in the course of a graceful speech, made in French, he paid the Marshal the glowing tribute that was his due.

Soon after his return from France the House of Commons debated the question of authorising a new Prayer Book. Though the controversy was very acute, it was brief. In the House of Commons the discussion was confined, to quote Lord Birkenhead, to "one hectic evening." That a disputation of this

kind should occur and he have no part in it was too much for so doughty a fighter. "For the first time since I left the House of Commons I regretted having done so," he wrote subsequently to *The Times*. The debate, he declared, filled him with amazement. "The speeches which are acclaimed as decisive in that discussion ought not, if competently answered, to have influenced a schoolboys' debating society." He felt strongly that the House ought to have supported the almost unanimous view of the bishops, as it would have done had Irish, Scottish and Welsh members, owing no allegiance to the Church of England, followed the example of Roman Catholic members in abstaining from participation. To those who might be astonished that the F. E. Smith of the Protestant platforms of Liverpool should support a proposal which sanctioned an increased measure of ritual, he explained that "the Protestantism of these realms . . . depends upon the strong protestant spirit of the population ; it depends upon an inveterate objection to Papal superstitions, and to the undue and intolerable intrusion of the priest upon the individual conscience. . . . England, in fact, is as unlikely to renounce the fundamental doctrines of Protestantism as the College of Cardinals is to elect Sir William Joynson Hicks to be the next Pope."

Naturally, this outburst did not improve his relationship with those Ministerial colleagues who had participated in the debate on either side. Those who had opposed the measure were derided, and those who had supported it were accused of being incompetent to answer arguments that ought not to have influenced

a pack of schoolboys. The intervention of Lord Birkenhead on the side of the High Churchmen did not secure for him their gratitude, or even the approval of their Press, for many of them were Die-hards, and of those who were not, many were not attracted to the author of the Glasgow rectorial address. He was told in terms of acidulated reproof that his contribution to the discussion was "eminently characteristic," and that it was "not calculated to ingeminate that spirit of accommodation which is so much to be desired."<sup>1</sup> The rebuke must have appeared amusing to Lord Birkenhead when he recalled that his unforgivable offence in the eyes of the Die-hards was that in the Irish negotiations he had "ingeminated that spirit of accommodation" for which the King himself had called in his famous speech at Belfast.

That Lord Birkenhead had a gift for engendering this spirit was again proved in an unusual manner about this period. Difficulties having arisen between the municipal authorities of Liverpool and Birkenhead over the Mersey Tunnel scheme, the Earl was asked to assist in bringing the parties to agreement after a protracted deadlock, and this he did with happy results. Subsequently his services were acknowledged at a luncheon given in his honour by the two corporations.

Despite his many preoccupations, Lord Birkenhead's pen was not idle during his tenure of office as Secretary of State for India. In 1925 his book *Famous Trials* was issued. In September 1927 was published the longest literary work of his career:

<sup>1</sup> *Morning Post*.

*Law Life and Letters.* It ran to two volumes, and though it was actually a collection of essays and self-contained papers, the work was largely autobiographical. For many readers the most interesting chapter was, and is, that entitled "Milestones of My Life," in which he recounts the principal events of his career in a manner which strikes a pleasant note midway between mock modesty and egoism. Though the book is very interesting, as a major literary work it is a little disappointing in that most, if not all, of its contents were written originally for magazine publication. It was, in fact, a journalistic pen that Lord Birkenhead used at this period.

His contributions to newspapers and periodicals were so numerous as to excite in the breasts of some professional journalists feelings of jealousy and injustice. There was much muttering in Fleet Street about the impropriety of a Cabinet Minister writing for the Press. Some journalists rather thoughtlessly described him as a "blackleg," which accusation could not be sustained so long as others declared that Lord Birkenhead was taking such large fees for his numerous articles that the amount available to newspapers for the purchase of other free-lance contributions was seriously diminished.

On one occasion Mr. Edgar Wallace asserted that he offered up a prayer of gratitude every night for the fact that Lord Birkenhead did not write detective fiction, for such was his lordship's efficiency in everything he undertook that his entry into this field of literature would be a serious matter for those already established there.

Evidently, in his early years, there had been some talk of his adopting journalism as a career, for in the *Birkenhead Advertiser* of November 10th, 1888, it is recorded in a style once favoured by "gossip writers":

"The talk is that the noble and rather numerous family of Smiths is going up the ladder of fame by leaps and bounds.

"That we have long had Mr. Newsman W. H. Smith, First Lord of the Treasury, and leader of the House of Commons.

"That now we have 'our own' Alderman Smith—Frederick the First—presiding over our local legislature.

"That his eldest son, who shows literary proclivities, is already 'on the list' for future appointment to the staff of a leading London daily newspaper, and that in time to come, whatever some folks may think, we may look for some wonderful Smithian *Telegraphese*."

Fortunately for the profession, not all those clever boys "destined" for journalism reach its pay rolls as staff writers, or the profession might be much more competitive and overcrowded than it is.

Lord Birkenhead's connection with the Press was said to have begun when, as a schoolboy, his speech at a certain presentation ceremony was reported, for it was rumoured that he himself was responsible for the presence of the reporter!

If public men are the raw material of journalism, Lord Birkenhead represented a considerable consignment. For more than thirty years he provided the Press with excellent copy in the form of speeches, character sketches and "gossip." Concurrently, he

wrote for the Press, his first article being contributed to a Birkenhead paper while he was an undergraduate. Even during his early years in Parliament, when he was working at very high pressure in the courts and on the platform, as well as in the House, he found time for occasional Press contributions on political topics. During the War he became for a time the controller and censor of the Press. Later, his dispatches as observer with the Indian corps were supplied to all newspapers and were widely published. After his return from France he, as Attorney-General, had the unusual experience of suppressing for a time a famous London newspaper—*The Globe*—for an offence against the censorship. Though Lord Birkenhead was now a Minister, he did not allow his Cabinet rank to deter him from writing casual articles for the Press. After he returned from his first visit to America he contributed many articles to a London evening newspaper describing his journeyings and the war effort of the United States. When it is recalled that the Attorney-General went to America as the country's representative and at the country's expense, it seems now a little odd that he should have been allowed to write up his impressions of the experience in order to make a profit. But then the War was raging, and many wholesome precedents went by the board.

Nevertheless, he continued to write articles after his promotion to the Woolsack, and there was no serious protest.

Soon after his return to office as Secretary of State for India, objections to Lord Birkenhead's journalistic activities were raised in the House, and the Prime



Minister stated that the Government had decided to reaffirm the principle that Ministers of the Crown should refrain from writing for publication articles in any way connected with matters of public policy. But because articles in newspapers, and more particularly in magazines, are often written an appreciable period in advance of publication, further articles by Lord Birkenhead appeared after the Prime Minister's statement had been made. The critics did not understand this, nor would some of them wish to understand it. Thus it became necessary, later, for Mr. Baldwin to explain that Lord Birkenhead was under contract to complete certain historical articles in monthly magazines, to the completion of which he (Mr. Baldwin) thought no objection in the circumstances could be taken. Lord Birkenhead had "most readily" fallen in with the desire that he should make no further contribution to journalism. Once again the decision was applauded, and the subject was dropped. But four months later there was an astonishing development. In a publication of an unusual kind there appeared an article by Lord Birkenhead devoted to the excellencies of an industrial concern manufacturing condensers for wireless telegraphy. It was never doubted that the condensers were above criticism, that their manufacturers were reputable, but, it was asked, was it not indecorous that the Secretary for India, a former Lord High Chancellor of England, should allow his pen to be hired on behalf of a commercial concern? Some of Lord Birkenhead's most consistent admirers were disturbed by the incident.

Again explanations were forthcoming. Lord Birkenhead had undertaken, a year earlier, to write a number of articles "showing how, in a striking series of cases, great talent had triumphed over post-war business difficulties." After he had supplied some of the articles, and without his being notified of the development, the style of the periodical for which the articles had been written was changed and his articles were "published in the form of a separate broadsheet, without any of the concomitants of a newspaper." When he became aware of the change Lord Birkenhead refused to continue the series.

The storm blew itself out. Three months later there was just one more explanation by the embarrassed Mr. Baldwin, who stated that his noble friend had now ceased to write articles, but having parted with a very limited number which were no longer under his control, there had been articles published since the policy of the Cabinet had been reaffirmed; but only one now remained—one on eloquence. Perhaps the questioner might be interested in that one.

Lord Birkenhead never made a secret of the reason why he contributed to the Press. "For thirty years," he told an audience of women journalists, "I have supplemented my flagging resources by the aid of journalism." While, on other occasions, he made a similar explanation, he never attempted to justify the actions of which complaint was made, though he said on one occasion that the writing of literature as distinct from articles on public policy, had many practitioners in office—including Disraeli, Gladstone,





Lord Morley, Lord Balfour and Mr. Churchill. For the writing of articles of other kinds he offered neither apology nor excuse. It can only be concluded that, unhappily, where Lord Birkenhead was concerned, the only answer—and that not an admissible one—was that needs must when the devil drives.

For over two years, however, Lord Birkenhead's contributions to the Press ceased, but in the spring of 1928 Mr. Baldwin was again on his feet defending his wayward colleague. This time an article on "The Intrusion of Women," touching, in part, on the un-wisdom of further extension of female suffrage, was the cause of the trouble. Mr. Baldwin was not happy in his reply. After all, he asked, was a single article in a monthly publication to be regarded as a breach of the Cabinet rule on journalistic contributions? He admitted that the article appeared to touch the fringe of current controversy, and to touch it in a sense different from the general view of the Government. "Lord Birkenhead informs me that it treats the subject in so general a form that he did not expect that exception would be taken to it on this account." To murmurs of dissatisfaction with this answer, the Prime Minister added: "That there has been an error of judgment on Lord Birkenhead's part is the very worst I can say." And some might add that the best that could be said was that Lord Birkenhead was very fortunate in having a chief so loyal and so indulgent; for there can be little doubt that these episodes must have been very distressing to a man of Mr. Baldwin's character.

For a little while the subject of Lord Birkenhead's

journalism dropped, but presently the Earl's name began to appear in the only columns of the Press which hitherto had not been privileged to carry his contributions. To the surprise of many, and to the pain of still more, the public was treated to the sight of testimonials written by the Secretary of State for India appearing among the displayed advertisements in certain newspapers. Those whose products and services he commended were, without doubt, worthy of the highest commendation; but such things coming from a Minister of the Crown, and one who had confessed to the embarrassment of "flagging resources," could not be other than distasteful to both the public at large and to Lord Birkenhead's colleagues.

There was, then, no astonishment when, almost concurrently, reports appeared of Lord Birkenhead's impending retirement from politics. First it was stated that he would withdraw after the next General Election, and later that the Prime Minister had agreed to release him earlier in order that he might take up certain directorships which it would be convenient to him to accept at once.

Thus he took his departure from the Government and from an office in which his work cannot yet be justly appraised. In his letter of resignation he observed: "I do not believe that the last four years will ultimately be pronounced the most unfruitful of my life." To which Mr. Baldwin replied: "It is too early yet to estimate the value of your work at the India Office, but I am confident that the historians of our time will do it justice."



It has been asserted by some that Lord Birkenhead's appointment to the India Office was unwise because he, of all the Coalition Cabinet, voted against the declaration of 1917, which must, of necessity, govern Indian policy for many years to come. On the other hand, his view did not go to the extreme right of Die-hardism; he did not, for instance, go to the point of approving General Dyer's action at Amritsar; so that he might well be considered a moderate man, as certainly he was a strong man; and that was the type which the India Office required. That he himself desired the office is evident from the fact that he might have left it to return to the Woolsack at the time of Lord Cave's death, but he refused to do so. There were rumours at one time that he had taken the India Office as a preparation for the exalted post of Viceroy; but though that is an office he might have adorned, and whose splendours would not have been distasteful to him, it is to be doubted whether he whose life had so many facets and who was ever a *bon vivant*, would have been at home in the magnified suburbanism of Indian social life with its snobberies and petty conventions. Moreover, his lack of sympathy with the military mind would have made for serious difficulties. It is likely that he did not regard the India Office as the stepping stone to anything. According to Lord Beaverbrook, his ambitions experienced a "distinct slump" during the War. While, as a gambler for high stakes, he would not have neglected an opportunity which presented itself unexpectedly, it is probable that he was ready to play

the part allocated to him without any considered design for the future.

Be that as it may, when he went to the India Office, and when he made his forlorn bid for escape from a cul-de-sac by his insistence on the reform of the House of Lords, he had not contemplated an early termination to his political career; still less could he have anticipated its termination in the circumstances which, in the result, attended it.

On his relinquishing office the King approved his appointment as a Knight Grand Commander of the Order of the Star of India. He had audience of His Majesty at Sandringham, and spent a night there as the Sovereign's guest. Thence to the cloisters of Oxford for rest and meditation amid surroundings dear to him from his youth, a page of life after his own heart, before entering upon a new career for which very evidently he had little liking, but which he was now obliged to take because there were things in life which he failed to learn at Oxford.

## CHAPTER XIV

### THE FINAL PHASE

ONE experience that came to Lord Birkenhead at the time of his retirement is to be inferred from a passage in a speech made at a school prize-giving, which was his first engagement after his resignation: "I have suffered throughout life (he said) from the efforts of various people to give me good advice. Any small success I have made in my life has been founded on consistent disregard of the good advice that has been given to me." Whatever may have been the particular piece of advice that provoked that observation, we may be sure that it played no part in Lord Birkenhead's subsequent actions.

On relinquishing office he took pains to make clear the fact that he had no grievance. "I entered the Government four years ago perfectly understanding the scale of my official emoluments." Further, he agreed that "the present rule as to journalistic activities of Ministers is a wise one. Political journalism is ruled out; literature is not."

But the rule now applied to him no longer. He was free to write as he wished.

There must, however, have been irony in the reflection that when the freedom of his pen meant

much to him financially, he was denied it. Now that he might write as freely as he wished, he had small need to write at all.

Directorships of highly important companies were offered to him. Among the invitations he accepted was that of The Greater London and Counties Trust Limited, of which he became chairman, and whose function is the development of electrical power. He accepted also directorships of Imperial Chemical Industries Limited, and of Lyle and Tate, the famous sugar-refining house.

Possibly by reason of the financial relief which his appointments afforded, Lord Birkenhead's pen was not so productive as it had been during other periods of his career, nor was its work so sprightly. At one stage it provided flashes of the wit that illuminated the maiden speech of F. E. Smith; as, for example, when he wrote of Sir Herbert Samuel: ". . . strange, incredible perhaps as it seems to most of us, he has really quite sincerely believed that political liberalism contains something that is beautiful, admirable, and even useful to the nation. As long, therefore, as lamp is burning with however feeble and flickering a light, he must conceive it to be his duty to foster and cherish it as long as it burns at all. And so at the very moment when most people would have looked the other way, and let it expire, this loyal and prudent old Liberal virgin produced his austere and honest bellows."

His later articles, however, though always interesting, did not exhibit his usual originality of thought, nor were they sweetened by that humour which was

a necessary ingredient of controversial articles by him. Without it he was wont to indulge in mere bludgeoning vehemence which, impressive as it is on the platform, is particularly impotent when translated into frigid print. Particularly was this true of some of his articles upon India, where he abandoned almost entirely that prudence which led him, as Secretary for India, to put important statements into writing and to read them to the House of Lords—a step most unusual for Lord Birkenhead, whose ability to speak without notes of any kind amounted to genius.

Though “never” is a strong word, as far as his literary work is concerned there is substantial truth in Lady Oxford’s statement that Lord Birkenhead’s writings conveyed the impression that he “never put the whole of his mind into his work.”

It is perhaps characteristic of a man whose friendships were almost exemplary in their loyalty and warmth, that some of his finest writing is to be found in obituary tributes to his friends and colleagues.

To those who knew Lord Birkenhead only as a vigorous advocate and a political rhetorician, a personality as strange as it is charming shines through his character sketch of his brother, Sir Harold Smith, who predeceased him; and through his tributes to his airman friend, Jack Scott, and to that remarkable advocate, Sir Edward Marshall Hall. And of all the noble words that were evoked by the tragic end of Lord Kitchener I know none that surpass the closing phrases of Lord Birkenhead’s essay upon Kitchener :

“We cannot do better than take leave of the great man at this moment of glittering triumph. Not ours

to follow him months later into the Northern mists whence, with the loyal and chivalrous Fitzgerald, he voyaged, still for England, upon the last journey of all. Who knows what pictures raced through that driven brain in the dreadful moment of realised doom? Many, I suspect, of fierce blue skies and scorching deserts of the East; some perhaps of Broome and the roses, where never should be pleasaunce for their master; most of all, be sure, of that England which he steadfastly and ardently loved . . . and then the black icy breakers of the Western Orkneys . . . and a valiant heart extinguished for ever."

This, however, and the other tributes to which I have alluded, were not work done in the final phase of Lord Birkenhead's life. That period began with a book entitled *Famous Trials*, which made a wide appeal. If we exclude *Turning Points of History*, and *Last Essays*, both published shortly after his death, the literary output of this phase terminated with *The World in 2030*, a book which evoked serious charges of plagiarism from Professor J. B. S. Haldane, over forty-four instances of the alleged offence being cited. The reply by Lord Birkenhead was not an explanation generally distributed to the Press, but a trenchant and acrimonious article which was sold to one newspaper—and not the one in which the charges were made. To this Professor Haldane retorted that certainly Lord Birkenhead had acknowledged in the preface to *The World in 2030* that he had followed in the footsteps of many famous scientists, including Dr. Haldane, and the Professor continued: "I have



no objection to anyone treading in my footsteps. I object to them stealing my boots to do so, and I am amused when they do not know how to put the boots on."

Of all Lord Birkenhead's non-legal books, probably *Points of View* and *Contemporary Portraits* will survive the longest. The *Portraits* are particularly notable for their insight into character and for their judicial weighing of qualities. Here he writes tolerantly of men concerning whom he rarely said a smooth word in public, and one gains the impression that here, and not on the political platform or even in Parliament, the real Lord Birkenhead is discerned.

Another clue to the real character of the Earl is to be found in the record of a notable dinner which he gave in the Hall of Gray's Inn to celebrate the coming of age of his son, in December 1928. Among the guests, who numbered about 150 and included a notable array of statesmen, were many who had suffered under the lash of his invective. But they knew their man better than the public was allowed to know him. As Sir John Simon has said of him :

"He had a loyalty in personal friendship which no amount of disagreement in opinion, no sharpness in retort, no confidence in his own judgment, could ever obscure or diminish."

Although his new duties as a man of business did not sit lightly upon him, Lord Birkenhead found time for most of the activities to which he had been accustomed, and he continued to be much in request as a principal guest at important dinners and ceremonies. Among the engagements he fulfilled was one

that took him to Dublin in connection with the Goldsmith-Burke Bicentenary. At Trinity College he received the honorary degree of Doctor of Laws, and delivered an address on Burke, delighting an audience of Irishmen, ever critical judges of oratory.

But Lord Birkenhead's life as a retired Minister was not free from controversial experiences. As an ex-Lord Chancellor he enjoyed, when out of office, a pension of £5000 per annum. The possession of a Ministerial pension had always attracted the criticism of Socialists, and the fact that Lord Birkenhead when holding no Ministerial office became a pensioner, was more than they could be expected to accept with equanimity. He was criticised freely for reverting to his status as a pensioner when a connection with commerce did not permit him to assist in the judicial work of the House of Lords. The view of Lord Birkenhead, however, was that although he had never failed when eligible to take his share in the work of the law lords, the pension was in no way related to those duties, and he quoted many strong arguments in support of that view. An ex-Lord Chancellor, he pointed out, was usually found presiding over the Court on which he sat. If his pension related to his duties, why, then, should the president be receiving only £5000 per annum while the law lords sitting below him were in receipt of £6000? He adduced many impressive precedents in support of his action. Later he asserted that it was his intention to defend the principle that the pension was an unconditional one, and that he would continue to draw it but not to use the money. He was considering a scheme

whereby a trust would be created by him to receive the pension and to administer the fund for the benefit of hospitals.

It is interesting to note, since the criticism of Lord Birkenhead's pension came almost exclusively from Labour spokesmen, that Mr. Ramsay MacDonald, giving evidence before a Select Committee on Ministerial Remuneration, in April 1930, said: "You get men to take work on and go into certain offices; it may have increased their earning capacity, but by reason of their having served the State in this way, is it right that they should be thrown upon the scrap heap after they have finished?" Lord Birkenhead's case was clearly one of those in which, by the acceptance of office, his earning capacity had been not merely diminished, but, so far as his profession as a lawyer was concerned, completely destroyed.

The pensions incident by no means represented the full extent of Lord Birkenhead's participation in controversial matters after he had retired from official politics. During the General Election of 1929 he appeared on many platforms in the North of England in support of Conservative candidates, and in one of his speeches his new status as a partner in "big business" provided him with a jest against himself.

"There is not (he said) a single member of the Socialist Party who has any more knowledge of the banking world than I have; and my own knowledge has been chiefly confined to interviews with the manager of the bank with which I have unprofitably deposited my debtor balance."

The Liberal Party's large scheme for "curing" unemployment gave him ample scope for his destructive wit, and Soviet intrigue in British affairs furnished a large target for his heavy, rhetorical guns.

Soon after the General Election, with characteristic generosity, he gave a party to about five hundred people at his country place, Charlton, to celebrate the completion of an extension of his home. His regard for ancient custom was exhibited in the form of the feast which included the roasting of a large ox on the village green, and the provision of three pints of ale for every man. There were donkey rides for the children and dancing for the girls, with a brass band, resplendent in new uniforms, providing the music. What was more, His Grace of Marlborough and the Duchess were there with the Earl and Countess of Birkenhead, mingling with the merry company.

A few weeks afterwards Lord Birkenhead was in New York on a visit. This time his changed status might be noted in the company which he kept. No more were the lawyers of the Republic his principal companions and audiences. He met the great industrialists and the "tight wads" of Wall Street. In this setting he could not but observe, and with regret, that the Smiths, once the most numerous subscribers in the New York telephone directory, were outnumbered by the Cohens; and when he returned to London it was of finance and commerce that he talked.

Returning from America with its robust individualism, its earnest devotion to the best interests of trade and commerce, he was much surprised to find the

City of London bestowing its Freedom upon Mr. Ramsay MacDonald and Mr. Philip Snowden, the Prime Minister and Chancellor of the Exchequer. At the earliest opportunity he expressed his astonishment publicly "that in the first year of this Government, and before even the first Budget is presented, the City should rush forward to honour these statesmen."

One of his audience dissented, and was crushed with the retort: "I do not care whether you think I am wrong; I neither value nor wish for your opinion. I am simply stating my own," which opinion he reinforced with observations upon the war records of the two gentlemen whom the City had delighted to honour. The episode did little but show that although Lord Birkenhead was now of the City he knew little of its governors.

Lord Birkenhead's appearances in the House of Lords were not numerous after his retirement. On his first attendance as a private Member he had some difficulty in deciding upon the place he would occupy. Finally, he delivered his speech on traffic regulations in close proximity to the bishops. He appeared later to denounce the Labour Government's action with regard to the recognition of Russia, and he spoke with fierce but ineffective indignation on the recall of Lord Lloyd from Cairo. But the spell was now broken; something had gone. The words came as of old, the weapons were as varied and as skilfully employed as ever, but the effect was not the same. Still, he remained "good copy" for the newspapers, and his name was seldom absent from the headlines,

not even when he went abroad, for though holiday-making he had a knack of doing things which interested the public at home.

Nevertheless, the public were not prepared for the news that was wired home while he and Lady Birkenhead were at Biarritz in the spring of 1930. The Earl was seriously ill. The bulletins tended to make light of it, but when ultimately he came home it was reported that he would not be able to take part in public affairs for several months to come. Clearly this was no trivial indisposition. Even so, few suspected that his days were numbered. His physique had been always good, astonishingly good considering the strain that he imposed upon it at times. Once, during his Lord Chancellorship, as has been related, Lord Birkenhead experienced a declension of health due to overwork. Then a little later he had ear trouble resulting from over-indulgence in high diving at an age when most men have long retired from such strenuous exercise. Apart from these illnesses and occasional minor ailments such as chills, few men of fifty-eight had such a good medical history as Lord Birkenhead until his Biarritz illness. From that, ostensibly, he recovered, and was able to keep a few public engagements, including a visit to Lord's cricket ground to witness one of the Test matches.

In the month of August, however, he fell ill again. A chill had developed into bronchial pneumonia. For some days his condition was critical. The bulletins, to experienced eyes, told their story of a tense struggle for life, in which ultimately he seemed to



win. The bulletins ceased, and it was announced that he would shortly go abroad to recuperate.

When, surprisingly, the bulletins were resumed and it was known that he had suffered a relapse, the worst was feared. And yet the man seemed always so vigorous, so sturdy, that death could come to him only by way of an accident of unusual violence. By noon on September 30th, however, barely twenty-four hours after his relapse, the newspaper bills announced to an incredulous London: "Lord Birkenhead Dead."

In the tributes that were paid to his memory there were references to the tragedy of his death at a time when his gifts would have mellowed. Yet it is arguable that Lord Birkenhead was essentially a flower of the early summer. "To everything there is a season and a time to every purpose under the sun." To Lord Birkenhead's gifts autumn might have brought no mellowing.

"I am glad to think," he told the students at Glasgow University after his famous address, "that I have still much of the student in my own disposition. I myself never intend to grow old."

In the year before his death he was jesting about age at a dinner of the Japan Society. Said he: "My birthday is to-morrow, and in three years I shall unfortunately—if I live—have attained the age of sixty. Well, anybody who is travelling so swiftly along the road of life becomes more and more indulgent of the worship of ancestors. . . . I have wondered if there is anything in this rejuvenating idea. I have thought of this matter deeply, and I cannot see that a man of a hundred and fifty would be any particular

addition to the home. There would be a promising youngster of eighty or ninety about the house, and he might think he was entitled to come into his own."

"If I live . . ." Perhaps he had some presentiment that the intention he expressed at Glasgow would be fulfilled, that he would never grow old.

The tale of his years was but fifty-eight when on that autumn day, the last day of a golden September, he passed away. His body was borne across London and placed before the altar of the small chapel in Gray's Inn. It was said that he who liked small, intimate places, had an affection for this tiny sanctuary. There for a few days friends and admirers filed past the catafalque.

Alone on the coffin was a cross of pink carnations bearing the name "Juliet." It was the tribute of his Countess, and from some dim recess the mind yielded a fragment of his own phrase, ". . . Juliet whispered her love and Romeo sobbed out the agony of death."

So, after a pause at the crematorium, they laid his ashes to rest at Charlton, close to his country home. Statesmen, judges, lawyers, men of the Press and of commerce gathered for the last scene in the story of this remarkable man who, beginning humbly, had risen to high estate and had lived amid great events and was never overshadowed by them; ever masterly, proud, strong in contention, neither asking for quarter nor giving it. Now the choir sang :

I loved the garish day, and spite of fears  
Pride ruled my will.

Yet, they say, great men wept at his grave, and his favourite Cairn terrier, following disconsolately his ashes to their resting place, was aware that she would never nestle again upon his knee to be caressed by the man who, some said, "had no heart."

## CHAPTER XV

### IN RETROSPECT

**O**RATOR, scholar, lawyer, politician, statesman, writer—which of these differing personalities in the amalgam was the strongest element? The evidence of Lord Birkenhead's public life supports the theory that the lawyer was dominant. It was not the lawyer in his judicial rôle who had control; it was the advocate. In his political career there is traceable through many episodes a systematic method of speech and action. He would consider the facts of a situation, determine the side upon which his sympathies lay. Then the advocate would appear. He would fight for his point of view fearlessly, almost ferociously.

Men, studying his words, would regard him as an uncompromising partisan. The more heated and more protracted the controversy, the more violent he became. And then, to the surprise of many, he would be found conciliating, negotiating, compromising. As an advocate he had done his best to make his view prevail, but he recognised the strength of the other side. He was prepared to "settle out of court."

In the Irish controversy he did that. Earlier in his career he was prepared, at one stage, to do the same with the Insurance Bill; again with the notorious Lloyd George Budget; again with the Parliament

Bill, and with the final extension of feminine franchise. Strong party man though he was, he would not support his Party in the last resort at the expense of intellectual honesty. His legal and judicial training made him respect finally, and above all, the force of facts. The advocate who had spent the morning endeavouring to tear his rival's case to pieces, "slanging the other side's attorney" if he was so disposed, discrediting hostile witnesses, was to be found in the afternoon sitting down in comradely proximity to his opponent, making the best bargain he could.

This trait was the subject of comment by an old friend, who, writing in the *Birkenhead Advertiser* on Lord Birkenhead's appointment as Lord Chancellor, said :

"One thing which was not always in his favour with solicitors when he was a barrister on circuit, his fondness for arranging an amicable settlement of a case, should help him as an adjudicator who has not only to put into force the sound maxim, '*Audi alteram partem*,' but has also to reconcile contentions which often seem to be wellnigh impossible of reconciliation."

In his writings upon current controversial topics, the advocate, rather than the impartial student of affairs, is sometimes apparent. Particularly is this seen in his posthumous book, *Turning Points of History*, in the chapter in which he sets out to vindicate General Sir Hubert Gough. Elsewhere in the book we have the historian weighing fact and probability in steady balances. But in the Gough case, which was never the subject of public inquiry, he is counsel for the defence. What does it matter

that he belittles General Byng, and writes indignantly of the "slaughter" at Cambrai in the previous year—that Cambrai which Byng fought with consummate skill, attenuated forces and conspicuous economy of life! Lord Birkenhead's brief (self-bestowed, of course) is to vindicate Gough, and vindicated he shall be, whatever be the damage to the reputation of anyone else.

"Skilful, fearless, a trifle ruthless"—this summing up of his play on the football field recurs as one studies his life long after football days were over. He was out to win. The race must go to the swift and the battle to the strong.

He was swift and he was strong; but the highest prize did not fall to him. He will not go down to history as a great leader of men, though as a great advocate and lawyer his place seems secure.

When time has lent perspective and has disclosed more evidence than his public life affords, it is possible that we may find a two-fold reason for this failure; firstly, his mode of life, creating the need of a large income; secondly and probably consequential, his preference for the legal bird-in-hand to the political brace in the bush.

It is often said that his first false step was the acceptance of the Woolsack. The Lord Chancellorship lured him into a cul-de-sac. But it is arguable that he left the main highway to leadership when he accepted the office of Solicitor-General. In the year 1914 the then F. E. Smith was the idol of multitudes of young men of the country. Many of those



who were not of his political faith admired his splendid audacity, his refusal to be browbeaten by pompous persons and to accept their platitudes with deference. Further, he was remarkably efficient, he "knew his job," and he was a sportsman.

Had he valued and fostered that admiration and support, he would have remained where most of those young men went, instead of coming home from France in 1915 and masking his identity behind the name of Sir Frederick Smith. Had he remained, had he come home from the Front only to take his place in the House and to use his commanding eloquence to portray the War as it was seen by the men in the trenches, and to secure for them such mitigation of their lot as was possible, the supreme position of leadership would almost have yawned to receive him. As it transpired, the man who, in politics, was above all a fighter, who inflamed the men of Ulster, who evidently was as reckless as he was strong, was not where the State needed fearless fighting men in its hour of trial. He was browsing over briefs in an obscure office. He was now Sir Frederick, the lawyer, and a member of the Cabinet.

The "F. E.", destined for leadership, expired then. It is probable that with his complete inhibition of self-deceit he recognised the price he had paid for his place in the Government. Lord Beaverbrook, who saw much of him at that period, testifies to a distinct declension in his ambitions. Having taken this course, obviously the Woolsack represented the ultimate objective available to him, unless exceptional opportunities were created by a revolutionary change

in politics, a change which, at one stage, he did his best to bring about.

The personal finances of statesmen have, in many instances, become matters of public concern. Lord Birkenhead's financial position and his need of a large income influenced the later stages of his public career. That much is very obvious. But when all the facts are known, it may be found that financial considerations weighed with him as early as 1915; it may be seen that his decision to leave the field and take one of the most remunerative offices in the Ministry was not unconnected with the problem of personal finance. At the same time, it must be remembered that, in the field, there was no place in which his exceptional intellectual gifts were likely to find full expression. Still less was he likely to find a post in the Army that would yield an income comparable to that which he had enjoyed before the War. Even the Commander-in-Chief had no such reward. Of Lord Birkenhead's action at this stage in his career, financial stringency is the only apparent explanation.

Nevertheless, of his character and his actions it is even yet too early to judge. These present reflections are no more than speculations and suggestions which arise in the course of a close study of Lord Birkenhead's life.

Many journalists presumed to judge him immediately after his death, and to dispose of him in a few paragraphs—obviously an impossible proceeding. In more than one instance the judgment pronounced was that he had not used his abnormal gifts in the interests of humanity. Such a charge was not novel. It was

made against Lord Birkenhead by councillors of his native town when it was proposed that the Freedom of Birkenhead should be conferred upon him. Oddly enough, a similar judgment was pronounced upon his father, thirty years earlier, in criticism of a proposal that his parent's service to the town should be commemorated in stone. On that occasion the opinion appears to have been held by no more than one or two writers of pseudonymous letters to the local press, and they were soundly rebuked by the late mayor's admirers.

Since that day, however, the equalitarian doctrines of Socialism have penetrated farther. The attitude toward life of a considerable number of persons is that of the third servant who wrapped his talent in a napkin. Conspicuous personal success is regarded by a greater number of individuals as something akin to crime. Reinforcing Socialistic teaching in this respect is the influence of a class of gifted but unambitious persons who are content with a limited but substantial measure of comfort, and who are not admirers of men more successful than themselves. Such as these add their refined sneers to the barrage of those husky Socialist howitzers directed always at the man who has become eminent by his own efforts, or who by energy, enterprise and perseverance has accumulated even a modest fortune.

In considering the charge that Lord Birkenhead did not use his gifts for the benefit of the community, it must be remembered that his substantial contribution to the general good of his country was not of a kind to evoke the appreciation of the general mass

of people. However valuable to the community they may be, the achievements of a great lawyer or a great judge will never command the popular applause accorded to, let us say, a lavish dispenser of public funds for social purposes, though the ultimate good of such expenditures may be a matter of grave doubt. Nor is Lord Birkenhead's service as an implacable opponent of cant and hypocrisy in all their forms likely to find early and adequate appreciation.

The present moment, when Socialist theories have seduced the minds of so many men, is hardly one in which popular opinion is to be expected to appraise fairly the personality and the service of one who was, above all, a great individualist. Yet when, ultimately, this country recovers its prosperity and its prestige we may well find that there has been a return to those principles of intensive work, of self-help, of suppression of self-pity which were exemplified by Lord Birkenhead—and to one or two virtues which he neither claimed nor possessed. His faults, for the most part, were the faults of youth, and since he died even younger in spirit than he was in body, we may concede to his memory—though he would never have asked for it—something of that indulgence which is ever extended to impulsive and adventurous youth.

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